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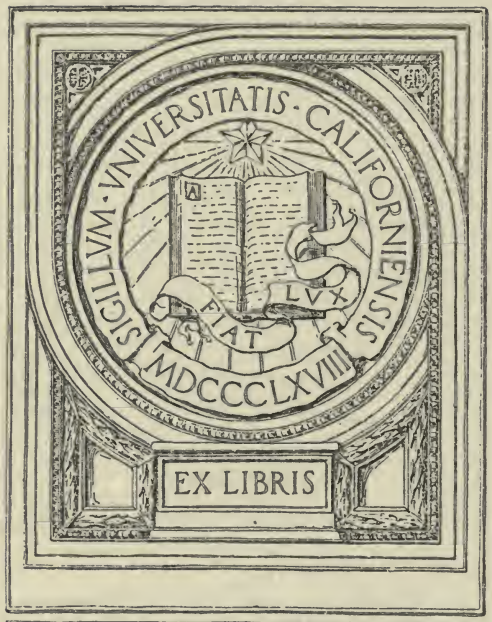
WORKMEN'S COMPENSATION INSURANCE

C. E. GOLDING, LL.B. (LOND.)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CALIFORNIA

WORKMEN'S COMPENSATION INSURANCE

WITH A SUMMARY OF THE STATUTORY LAW
RELATING THERETO

BY

C. E. GOLDING, LL.B. (Lond.)
F.C.I.I.

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PREFACE

THE object of this volume is to set forth in handy and compendious form suitable for the use of students, the principles and practice of workmen's compensation insurance. No attempt has been made to give a detailed exposition of the law on the subject, but a summary is given of the principal provisions of the relative statutes for convenience of reference and as an aid to the due understanding of the principles underlying this branch of insurance business.

The subject has been treated as it stands at the present time, and without reference to any projected alterations in the law. The course of political events makes it unlikely that the revision of the Workmen's Compensation Act, 1906, recommended in the Report of the Royal Commission appointed in 1920 to consider the matter, will materialize for some considerable time.

To his old friend, Mr. J. B. Welson, F.C.I.I., for much valuable counsel and assistance in the preparation of this work, the author tenders his grateful recognition

C. E. G.

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UNIV. OF CALIFORNIA

WORKMEN'S COMPENSATION INSURANCE

CHAPTER I

The History of the Liability of the Employer for Accidents

Accident insurance generally, in this country, dates from about the year 1848, and an excellent idea of the genesis of the movement may be gleaned from Mr. Alfred Foot's admirable work on Accident Insurance. The introduction of workmen's compensation business consequent upon the passing of the Employers' Liability Act, 1880, gave a great impetus to accident business, and there were at that time a number of well established companies in existence able at once to turn their attention to the new development.

Amongst these may be mentioned the Railway Passenger's Assurance Company, Norwich and London Accident Insurance Association, and the London Guarantee and Accident Company. These are representative offices, though not by any means a complete list. The Employer's Liability Assurance Corporation was established in 1880, and as its name implies, for the express purpose of developing the new class of insurance. Its subsequent success is now a matter of common knowledge. Various new companies were formed between 1880 and 1906, some of which succeeded but many of which have long since ceased to exist. During the same period a few of the older Fire Companies commenced to transact accident business, but it was not until the passing of the Workmen's Compensation Act, 1906, that the great majority of the Fire Offices commenced to transact workmen's compensation business. This they were practically forced to do by the extension of the Act to private householders, amongst whom were the bulk of their best connections. At the present time every big composite office transacts this class of business as a matter of course.

The branch of insurance denoted by the term "Workmen's Compensation" or "Employers' Liability" is entirely a modern development, having come into being in the year 1880. Those not familiar with the business may be puzzled by the use for insurance purposes of the two different terms mentioned, and it may be well to state at the outset that in meaning the two expressions are identical; one regards the subject from the point of view of the workman and the other from the point of view of the employer.

The first of the series of Acts relating to this subject was the Employers' Liability Act, 1880, and this nomenclature without doubt gave rise to the term "Employer's Liability." The later Acts were called Workmen's Compensation Acts, and so we get the double expression. The legislature shows a curious lack of consistency in these matters. It might be presumed from the naming of the various Acts that Parliament considered the term "Workmen's Compensation" as the more appropriate, but yet in the Assurance Companies Act, 1909—the charter of the insurance profession—the business is all through referred to as Employers' Liability, and must be described as such in the books of an insurance company. However, the two terms exist together and the Chartered Insurance Institute use "Workmen's Compensation" in their syllabus. The distinction, such as it is, is of academic interest only, but the term "Workmen's Compensation" is perhaps the more accurate of the two, as denoting compensation or benefits paid to the workman under circumstances which very often would have given rise to no liability on the employer by the ordinary common law of the land.

Before considering the various laws regulating the subject of workmen's compensation, it is necessary to trace—though only in outline—the way in which the position of the workman has developed under the rules of common law until the commencement of the legislation relating to the matter.

At common law a servant or workman had no claim against his employer merely because he met with an accident during his employment. In its strict and literal sense an "accident" is an entirely fortuitous event which could not in any way have been avoided. It is not caused either by negligence or by any wilful act, and this being so the law provides no remedy to the person

injured. So far as the rules of common law are concerned, the position has never been altered. If, therefore, a servant in the course of his employment met with injury by a pure accident, he was only in the same position as any other person, and no action for damages would lie against his master.

Damages were only awarded where an accident was caused by the negligence of some person, and what liability there was on the employer at common law must be considered entirely from this point of view.

There are two forms of negligence which give rise to a claim for damages against any person—

(1) His own negligence.

(2) The negligence of his servants while acting in the scope of their employment. The legal maxim—and one which is of very considerable importance—is expressed in the words *Qui facit per alium facit per se.* (He who does a thing through another does it himself.)

Thus a servant injured during the course of his employment may sustain his injury by reason of one or other of these two forms of negligence, and the resultant liability must be considered in relation to each form.

PERSONAL NEGLIGENCE OF EMPLOYER.

Injury to a servant due to the personal negligence of the employer always gave rise to an action for damages. The damages were not in the form of compensation as we know it under subsequent statutes, but consisted of such amount, proportionate to the nature of the injury, as a jury might award. Such an action might be sustained by any servant of whatever grade, whatever the amount of his earnings, and irrespective of whether he was engaged in manual labour or not. This distinction is important. The class of employee and the amount of his earnings were of no moment under the common law. The claim arose purely on account of the negligence which is a "tort," i.e. a civil wrong.

The negligence of the employer may consist of—

(1) His own personal act.

(2) His engaging incompetent fellow servants.

(3) His providing defective tackle or machinery.

The last two cases are in reality personal negligence of the employer, and this is shown by the fact that he will only be liable in those cases if he knew of the incompetence or defect, and provided the injured servant was not aware of it, or if he was aware of it, had called his master's attention to it.

Defence Open to the Employer. The employer can successfully resist an action for damages by proving that there was contributory negligence on the part of the injured servant. That is to say, if with the exercise of reasonable care the servant could have avoided the accident, he will lose his remedy. His own negligence and not his master's is the *proximate* cause of the injury. A good example of this is seen in the cases previously referred to, where a servant might be aware of some defect in machinery and did not call his master's attention to it. This is clearly contributory negligence, and the servant cannot claim.

NEGLIGENCE OF FELLOW SERVANTS.

We have seen that an employer is liable for injury caused by the negligence of his servants. Where that injury is caused to another servant in the employ of the same master, certain considerations arise, and these may be referred to the legal doctrine of "common employment." Under this doctrine, if a servant is injured by his fellow servant's negligence, his master is not liable. The law presumes that when the servant entered the employ of that particular master, he foresaw and agreed to run all the risks incidental to the employment, the chief of which risks is the liability to injury by the acts of his fellow servants. Having, therefore, agreed to incur these risks, the servant could not claim in respect of them. This rule is expressed in the phrase *volenti non fit injuria* (no injury is done to a consenting party).

In order that this doctrine may apply, however, two conditions are essential.

(*a*) *The person injured and the person causing the injury must be in the service of the same master.*

Generally speaking, this point is clear, as it is governed by the contract of service made between the various parties. A point arises where the employer is an incorporated company. In such cases a director or executive official though a servant of the company

is not considered as a fellow servant with his subordinates, and the negligence of such director or executive official is looked upon as negligence of the company, i.e. the employer.

The position where a person volunteers to assist another is different. Though there is no contract of service between the master and the volunteer, the latter puts himself in the position of a fellow servant with the employee whom he volunteers to assist, and accordingly can make no claim if he is injured by that employee's negligence. This has been affirmed several times in the Courts, notably in the cases of *Degg* v. *Midland Railway* (1857), *Hayward* v. *Drury Lane Theatre* (1917), and *Heasmer* v. *Pickford's, Ltd.* (1920).

(*b*) *The two servants must at the time of the injury have been engaged in a common employment.*

This does not necessarily imply that both servants must have been engaged on the same work, as that both were using a saw or working a lathe, but the two occupations must be so connected that the risk of accident arising from the carrying out of the one is a necessary incident of the other. Thus, a clerk engaged at a powder factory would usually be in common employment with the ordinary hands, as are also an engine driver and a signalman, for in each case the risks of one naturally affect the other. If, however, two ships belonging to the same owner collide, the crew of one are not in common employment with the crew of the other. Nor are persons whose employments are entirely distinct, even though they work in the same building. So if a master who lives on his business premises employs a maid for domestic purposes in his residential quarters and a man to work in the shop, the two are not in common employment. Examples might be furnished of other instances, and the facts must be determined in each case, but enough has been said to indicate the underlying principles.

There is, however, one case in which the doctrine of common employment would not avail the employer as a defence—

Where the negligence causing the injury arises through a breach by the employer of some statutory duty.

Under the Factory Acts an employer is bound to provide certain safeguards for his machinery, and if these are removed owing to the negligence of a fellow servant, the employer would be liable in spite of the doctrine of common employment.

FATAL ACCIDENTS.

The rules of common law already referred to applied to accidents causing disability only to the workman. Where the accident caused the death of the workman the employer escaped liability altogether. It was a rule of law that personal actions would not lie when either of the parties died, the maxim being expressed *actio personalis moritur cum persona.* To this rule there were certain exceptions, which are, however, not connected with our subject, and where a person might have recovered damages for injury, his representatives had no claim if the injury caused his death. It was a personal action and the injured person alone could bring it.

This position of affairs was productive of much hardship and led to the passing of the Fatal Accidents Act, 1846.

Fatal Accidents Act, 1846. This Act is commonly known as Lord Campbell's Act, and it effected a radical alteration in the law, giving to the dependants of the victims of a fatal accident important rights which they had not possessed before.

Section 1 provides as follows—

> "Whereas no action at law is now maintainable against a person who by his wrongful act, neglect or default may have caused the death of another, be it enacted that whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, and although the death shall have been caused under such circumstances as amount in law to felony.

This clause simply provides that the cause of action shall not be lost merely because the injured party is killed. It abrogates the doctrine *actio personalis moritur cum persona.* But it does not endow the representatives of the deceased with any right beyond what the deceased himself would have had if still alive. Therefore any defence such as contributory negligence or common employment which might have been set up against the deceased, will avail as a good defence against his representatives.

Section 2—

"Every action under this Act shall be for the benefit of the wife, husband, parent, or child of the deceased, and shall be brought by and in the name of the executor or administrator of the deceased person. The jury may give such damages as they think proportioned to the injury resulting from the death, and the amount so recovered shall be divided among the parties in such shares as the jury may direct."

The beneficiaries are further defined under Section 5. The word "parent" includes father, mother, grandfather, grandmother, stepfather, or stepmother, and the word "child" includes son, daughter, grandson, granddaughter, stepson or stepdaughter.

The action shall be brought by the executor or administrator of the deceased. It will, however, be understood that a very large proportion of the cases brought under this Act are in respect of the death of persons in a humble station of life who are not in the habit of appointing an executor and whose dependants are not accustomed to take out letters of administration. It was therefore found that this provision of Section 2 did not operate smoothly, and, accordingly, an amending Act was passed in 1864, entitled Lord Campbell's Act Amendment Act, which provided that if there be no executor or administrator of the deceased person, or if the executor or administrator fails to bring an action within six months of the death, the action may be brought by and in the name of all or any of the persons who are to benefit by the action.

Amount of Damages. The jury may award such damages as they think proportioned to the injury resulting from the death. This has been construed in the Courts to mean damages for *pecuniary* loss only. No damages may be awarded for pain and suffering of the deceased, nor for the shock to the feelings of his relatives. If no financial loss is incurred by reason of the death, no damages will be awarded. Pecuniary loss does not include funeral expenses, on the principle that these must be incurred sooner or later for everyone.

Time for Bringing Action. By *Section* 3 of the Fatal Accidents Act, 1846, not more than one action shall lie in respect of the same subject matter, and every such action shall be commenced within twelve calendar months after the death of the injured person.

If the injury to the deceased person had not resulted in death immediately, and in the interval between the date of the accident and the date of death, he had himself brought an action against the person liable, his representatives would not be able to bring another action under Lord Campbell's Act. The action would be absolutely barred if not commenced within twelve months of the death. This provision is qualified where the person liable is a public authority within the meaning of the Public Authorities Protection Act, 1893, in which case the action must be commenced within six months of the death. An executor or administrator who neglected to bring an action under Lord Campbell's Act against a public authority during the first six months, would thereby debar the relatives from suing in their own names during the second six months.

Particulars Required. By *Section* 4, the person bringing an action under this Act is required to deliver particulars of the person or persons on whose behalf the action is brought, and the nature of the claim.

Scottish Law. *Section* 6 provides that nothing in the Act shall apply to Scotland.

The Act was not required in Scotland, as by the law of that country, it had always been competent for a jury to award damages to the relatives of a deceased person whose death was caused by some other person's negligence.

Application of Act. The Fatal Accidents Act is of universal application wherever a death is caused by the wrongful act, neglect, or default of another, and, in this sense, it forms an integral part of the law of negligence. So far as regards the law on workmen's compensation, it has to do only with cases where the death of a workman occurs, and it should again be emphasized that the Act introduced no new liability on the employer in respect of the death of his workmen. We have already shown in what circumstances the employer was liable for injury to his employees at common law. This liability remained exactly the same after the passing of Lord Campbell's Act, except that an extension was made in the number of persons who might sue in respect thereof.

That the common law was often harsh in its operation, and except in a limited number of cases left a workman and his dependants totally unprovided for in case of injury by accident, even though

that accident was solely occasioned by the nature of the employment, cannot be doubted. With the growth and development of industrial life in this country this state of affairs became in course of time impossible, and led to the passing, step by step, of the laws governing the relations between an employer and a workman injured in his employment. The legislature, as is usual, proceeded slowly in the matter by first depriving the employer of certain defences open to him when sued by an employee for injuries due to negligence, and only at a later stage recognizing any right in the workman to compensation apart from negligence.

The evolution of the law on the subject will be dealt with in the next chapter.

CHAPTER II

Statutory Law

A full and thorough exposition of the statute law relating to workmen's compensation would more than suffice to fill the whole of this volume. It may be doubted whether any one Act has ever given rise to so much litigation as the Workmen's Compensation Act, 1906. Its exact meaning is so undefined and the question of liability thereunder is often so difficult to determine. The late Lord Cozens-Hardy, who as Master of the Rolls did more than any other judge to interpret its provisions, used constantly to refer to it as "this most difficult Act." The law of workmen's compensation has been fully and adequately dealt with by Judge Ruegg in his standard work on the subject, and an admirable text-book for students is Willis' *Workmen's Compensation,* which, as a compendium of the latest developments of this branch of the law, would be hard to excel.

In order, however, to add coherence to a work on the insurance side of the subject, and to facilitate a due appreciation of the conditions attaching thereto, it is desirable to set out as briefly as may be possible how the law stands.

EMPLOYERS' LIABILITY ACT, 1880.

The position of an employee in relation to occupational injury under the common law was, as we have seen, one of considerable hardship, and this fact contributed in no small degree to the passing of the Employers' Liability Act, 1880, the forerunner of the series of Acts. It should be understood that this Act did not recognize nor establish any right in the workman to compensation merely because he had met with an accident in the course of employment. What it did was to make the employer liable in certain cases of negligence, and to deprive him of the common law defence of "common employment." The title of the Act, "Employers' Liability," as distinct from "Workmen's Compensation," gives the clue to this distinction.

Section 1. Section 1 of the Act enacts as follows—

Where personal injury is caused to a workman

(1) By reason of any defect in the ways, works, machinery or plant connected with or used in the business of the employer ; or

(2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence ; or

(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or

(4) By reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway, the workman, or where the injury results in death, his legal personal representatives, shall have the same right of compensation and remedies against the employer as if the workman had not been in the service of the employer nor engaged in his work.

It will be clearly seen from this that the right to compensation under this Act is founded solely in the negligence either of the employer himself or of his servants, and the employer could no longer set up as a defence that the workman was in common employment unless the injury was due to the negligence of a subordinate fellow employee.

There was, however, another defence available to the employer at common law, viz., contributory negligence of the injured workman, so that no remedy would lie if the workman's negligence and not the employer's was the proximate cause of the injury.

Section 2. This defence was still preserved under the 1880 Act by the provisions of Section 2, which runs as follows—

A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases.

(1) Under Sub-section 1 of Section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2) Under Sub-section 4 of Section 1, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned.

(3) In any case where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Scale of Compensation. The Act goes beyond the rules of common law in laying down a definite scale of compensation. If an action for damages could be sustained at all at common law, damages were assessed by a jury. By Section 3 of the Act, the compensation is not to exceed a sum equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

This defines the maximum amount payable as compensation. The amount payable in each case is decided by the Judge of the County Court in England, or the Sheriff Substitute of the Sheriff's Court in Scotland, but such action may on the application of either party be removed to the High Court (Section 6).

Under Section 5, there shall be deducted from any compensation awarded to a workman any penalty which may have been paid to the workman or his representatives by virtue of any other Act, or if full compensation had been awarded under this Act, the workman could not subsequently claim any such penalty.

Notice of Injury. Section 4 of the Act deals with the question of notice of injury and the time limit for making a claim. Notice of injury must be given within six weeks, and any action must be commenced within six months from the date of the accident, unless it resulted in death, when the period is extended to twelve

months. In case of death, however, want of proper notice will not bar the action, if the judge is of opinion that there was a reasonable excuse for the failure to give notice.

Mode of Giving Notice (Section 7). The notice of injury must state—

(*a*) Name and address of injured person.

(*b*) Cause of the injury.

(*c*) Date sustained.

The notice is to be served on the employer, or one of two or more employers, either by delivery at his residence or place of business, or by registered letter addressed to his last known address. It follows, of course, that such notice must be in writing. A notice is not to be deemed invalid by reason of any defect or inaccuracy therein, unless, in the opinion of the judge, the employer has thereby been prejudiced in his defence, or the defect or inaccuracy was for the purpose of misleading.

Definition of "Workman." By Section 9, a workman is defined as a railway servant, and any person to whom the Employers and Workmen Act, 1875, applies.

By Section 10 of this latter Act it is enacted that the expression "workman" does not include a domestic or menial servant, but save as aforesaid means any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of 21 years or not, has entered into a contract with an employer, whether the contract be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

The Employers' Liability Act is thus much more restricted in its scope than later legislation on the subject.

This Act was enacted to continue in force up to the end of the Parliamentary Session following 31st December, 1887, i.e. a period of approximately seven years, but it has been renewed year by year under the Expiring Laws Continuance Act, and it is still in force. There is nothing in the Act to prevent a workman agreeing with his employer not to claim compensation, and such agreement is lawfully binding upon both the workman and his representatives. This is what is commonly known as "contracting out."

ACTS OF 1897 AND 1900.

The Employers' Liability Act was followed after a lapse of seventeen years by the Workmen's Compensation Act, 1897, which together with the Workmen's Compensation Act, 1900, very considerably extended the liability of the employer. These two Acts, however, were both repealed by the Workmen's Compensation Act, 1906, and need not be further examined in detail.

WORKMEN'S COMPENSATION ACT, 1906.

This Act extended and codified the law on workmen's compensation, and pending any further changes by the legislature is the Act which regulates the subject. As its name implies, and following the precedent established by the Act of 1897, the Act does not so much concern itself with extending the liability of the employer as with bestowing a definite right on the workman to compensation in certain events. This right is an absolute one, and has nothing to do with the negligence of the employer or of his servants. The doctrines of common employment and contributory negligence are swept away entirely, and the law recognizes an inherent right in the workman to be compensated for injuries incurred by reason of his employment. This was a distinct advance in favour of the workman over the old rules of common law.

Modern developments of workmen's compensation insurance arise entirely out of the Act of 1906, and its terms are of the first importance to all those engaged in the business. The student is strongly recommended to study the Act itself, and as many as possible of the judicial decisions in relation thereto. It may be said with some degree of justice that almost every sentence in the Act has been at some time or other interpreted in the Courts.

The provisions of the Act are explained here in summarized form, and should be studied in conjunction with the text of the Act itself.

Liability of Employers (Section 1). If in any employment personal injury by accident arising out of and in course of the employment is caused to a workman, his employer shall be liable to pay compensation in accordance with the first Schedule to this Act.

This liability is qualified in three ways—

(1) No liability arises for injury which does not disable the workman for at least one week from earning his full wages. Thus, a workman who was not at any time more than partially disabled would have no claim. In the scales of compensation given in the first Schedule to the Act, it is further provided that where incapacity lasts less than two weeks, no compensation is payable in respect of the first week.

(2) Where the injury was caused by the negligence of the employer or of some person for whom he is responsible, the workman is not to be deprived of any right of action he may have in respect thereof, but he may elect whether to claim compensation under the Act or to sue for damages independently of the Act. He can, however, claim a remedy under one ground only, and not both under the Act and independently of it.

(3) Where the injury is attributable to the workman's serious and wilful misconduct he forfeits his right to compensation therefor, unless the injury results in death or serious and permanent disablement.

This provision re-enacts a similar provision in the Act of 1897, except that in that Act, misconduct was a complete bar to compensation even if death or permanent disablement resulted.

Disputed Claims. Any question arising under the Act is, in the absence of agreement, to be settled by arbitration in accordance with the second Schedule to the Act.

Questions to which arbitration is to be applied include—

(*a*) Those relating to the liability to pay compensation.

(*b*) As to whether the injured person is a workman to whom the Act applies.

(*c*) The amount or duration of compensation.

Notice of Accident (Section 2). Notice of the accident must be given as soon as practicable, and before the workman has voluntarily left the employment. The claim for compensation must be made within six months of the date of the accident, or if death results, within six months of the date of the death.

Exceptions. (*a*) Want of or defect or inaccuracy in the notice of accident will not bar the workman, if it is found that the employer has not thereby been prejudiced in his defence, or that the

want, defect, or inaccuracy was due to mistake, absence from the United Kingdom, or other reasonable cause.

(*b*) Failure to make a claim within the statutory period shall not be a bar, if due to mistake, absence from the United Kingdom, or other reasonable cause.

What is reasonable cause is a matter of law to be decided according to the circumstances. (*Hillman* v. *London, Brighton & South Coast Railway Co.*) A point like this illustrates the necessity for judicial decisions which arises so frequently under this Act.

Method of Giving Notice. The method of giving notice follows precisely that laid down in the Employers' Liability Act, 1880, which has already been referred to.

Contracting Out (Section 3). Contracting out of this Act is not permitted, and any agreement between the employer and the workman to that effect would not be binding. The parties may, however, agree to set up an alternative scheme of compensation, which, to be effective, must be certified by the Registrar of Friendly Societies as providing scales of compensation not less favourable to the workman or his dependants than the scales of the Act. If the scheme calls for contributions from the workmen, the benefits must be at least equivalent to those contributions *in addition* to the benefits provided by the Act, and a majority of the workmen must have declared themselves by ballot in favour of the scheme. In any event, alternative schemes are not to be made an obligation on the workman when entering the employment, and such schemes must contain a provision enabling the workman to withdraw.

Sub-contracting (Section 4). A principal is made responsible for accidents to the employees of sub-contractors. The Section runs: Where any person (in this Section referred to as the principal) in the course of, or for the purposes of his trade or business, contracts with any other person (in this Section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him, and where compensation is claimed from, or proceedings are taken against the principal, then in the

application of this Act references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Two conditions are seen to exist in this provision—

(*a*) The principal must engage the contractor in the course of and for the purposes of his (the principal's) trade or business.

(*b*) The contractor must have been engaged to do work undertaken by the principal.

Exceptions. The Section provides two exceptions to the principal's liability—

(1) Where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power, the contractor is alone to be liable to his own workmen.

(2) The principal is not to be liable where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work, or which are otherwise under his control or management. The exact definition of what premises fall within this exception is a matter of fact for the arbitrator.

Principal's Right Over. When a principal is liable to pay compensation under this Section, he is entitled to be indemnified by any other person (usually the contractor) who would have been liable apart from the Section. The workman has the right to recover compensation from either the principal or the contractor as he may elect.

This Section might at first sight be thought to refer only to the relationship arising between a contractor and a sub-contractor to whom the contractor has let out part of his own contract. This, however, is clearly not so; the wording of the clause obviously includes a much wider relationship between principal and contractor, and this has been frequently so decided in the Courts.

Bankruptcy of Employer (Section 5). Where an employer has insured his liability under the Act, then in the event of his becoming bankrupt or making a composition with his creditors, any right which the employer may have against the insurers are transferred to the workman. That is to say, where an insurance company is

liable to reimburse an employer for compensation to an injured workman, in case of the employer's bankruptcy the workman has his remedy directly against the insurance company. The latter, for their part, have the same rights and defences against the workman as the employer would have had, and are not in any event under any greater liability to the workman than they would have been to the employer. The workman may prove in the bankruptcy in respect of any balance of liability for which the insurers might not be liable. Any debt so proved, up to an amount of £100, is made a preferential debt in the bankruptcy, where no rights exist against any insurers.

Where the employer is a company, this Section applies to any winding up proceedings other than a voluntary winding up for the purpose of reconstruction or amalgamation.

Rights Against Third Parties (Section 6). Where the injury was caused under such circumstances that some person other than the employer is legally liable to pay damages therefor, the workman may proceed against both his employer and the third party, but shall not be entitled to recover both compensation and damages.

If in such circumstances compensation has been paid to the workman, either by his employer or by a principal under Section 4, the employer or principal has a right to be indemnified by any person liable to pay damages.

Rights of Indemnity. The person paying compensation has certain rights of indemnity both under this Section and under Section 4 (Sub-contracting). These rights are important to an insurance company, as by virtue of the doctrine of subrogation the company would be entitled to exercise any rights of indemnity vested in the employer insured under the policy.

Seamen (Section 7). The Act of 1897 did not apply to seamen, but by this Section the Act of 1906 lays down special provisions to apply to masters, seamen, and apprentices in the sea service, and apprentices to the sea fishing service. Such persons are within the Act, provided they are workmen within the meaning of the Act, and belong to the crew of a ship registered in the United Kingdom, or of any other British ship of which the owner or manager resides or has his principal business address in the United Kingdom. This includes a pilot as if he were a member of the crew of the vessel

on which he is employed. The Act does not include the crew of a fishing vessel if remunerated by a share in the profits.

The Section proceeds to lay down special rules—

(*a*) To govern the conditions under which notice of injury must be given and claims for compensation made, having regard to the conditions under which seamen pursue their calling ; and

(*b*) To regulate the amount of compensation payable in view of the obligations imposed on shipowners by the Merchant Shipping Act, 1894, to maintain and otherwise provide for the members of their crews.

These special provisions are self explanatory, and need not be fully set out.

Industrial Diseases (Section 8). This section represents an entirely new departure in that it recognizes a right in the workman to be compensated for occupational diseases as well as for occupational injury. The diseases to which the Act referred are specified in the third Schedule to the Act, and are six in number. Power is given in the Act to the Home Secretary to extend by Order in Council the list of diseases to which the Act shall apply, and various extensions have from time to time been made. The full list of diseases within the scope of the Act is given for convenience of reference as follows—

1. Anthrax, due to the handling of wool, hair, bristles, hides and skins.
2. Mercury poisoning, due in the same way to the use of mercury, etc.
3. Phosphorus poisoning, due to the use of phosphorus, etc.
4. Ankyeostomiasis, due to work in mines.
5. Arsenic poisoning or its sequelae, due to handling arsenic, etc.
6. Lead poisoning or its sequelae, due to handling lead, etc.
7. (*a*) Poisoning by benzene and its homologues or the sequelae, due to handling benzene, etc.

(*b*) Poisoning by nitro- and amido-derivatives of benzene and its homologues (trinitrotoluene, aniline, and others), or the sequelae, due to handling such derivatives of benzene, etc.

8. Poisoning by dinitrophenol or its sequelae, due to handling dinitrophenol, etc.
9. Poisoning by nitrous fumes or its sequelae, due to working in any process in which nitrous fumes are evolved.
10. Dope poisoning by any substance used with a solvent for acetate of cellulose or its sequelae, due to any process in the manufacture of aircraft.
11. Poisoning by tetrachlorethane or its sequelae, due to the use of tetrachlorethane.
12. Poisoning by carbon-bisulphide or its sequelae, due to the use of carbon-bisulphide, etc.
13. Poisoning by nickel carbonyl or its sequelae, due to any process in which nickel carbonyl gas is evolved.

14. Poisoning by gonioma kamassi (African boxwood) or its sequelae, due to any process in the manufacture of articles therefrom.

15. (*a*) Dermatitis produced by dust, or liquids.

(*b*) Ulceration of the skin produced by dust or liquids.

(*c*) Ulceration of the mucous membrane of the nose or mouth produced by dust.

16. (*a*) Epitheliomatous cancer or ulceration of the skin.

(*b*) Ulceration of the corneal surface of the eye, due to handling of tar, pitch, bitumen, mineral oil, or paraffin, or any compound product or residue thereof.

17. Chrome ulceration or its sequelae, due to any process involving the use of chromic acid, or bi-chromic of ammonium, potassium or sodium.

18. Scrotal epithelioma (chimney-sweep's cancer), due to chimney sweeping.

19. Compressed air illness or its sequelae, due to any process carried on in compressed air.

20. Cataract in glassworkers, due to processes in glass manufacture involving exposure to molten glass.

21. Miner's nystagmus, due to mining.

22. Subcutaneous cellulitis of the hand (beat hand), due to mining.

23. Subcutaneous cellulitis over the patella (miner's beat knee), due to mining.

24. Acute bursitis over the elbow (miner's beat elbow), due to mining.

25. Inflammation of the synovial lining of the wrist joint and tendon sheaths, due to mining.

26. Glanders, due to the care or handling of any equine animal suffering therewith.

27. Telegraphists' cramp, due to the use of telegraphic instruments.

28. Writers' cramp.

29. Cataract due to exposure to rays from molten metal in the manufacture of iron or steel.

30. Twisters' cramp caused by twisting of cotton or woollen or worsted yarns.

Certain conditions attach to a claim by a workman for disablement caused by disease—

(1) The certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which the workman is employed, must certify that the workman is suffering from a scheduled disease, and is thereby disabled from earning his full wages.

(2) Alternatively, the workman may be suspended under any special rules made under the Factory and Workshop Act, 1901, from his usual employment on account of having contracted such a disease.

(3) If death results from such disease.

In each case the disease must be due to the nature of the employment of the workman at any time during the previous twelve months. The incapacity resulting from such disease is to give the same right to compensation as if it had resulted from personal injury by

accident arising out of, and in course of, employment subject to the following modifications—

(*a*) The disablement or suspension is to be treated as the happening of the accident.

(*b*) If the workman when entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, he forfeits his right to compensation.

(*c*) Compensation is recoverable from the employer who last employed the workman during the period of twelve months in the employment to the nature of which the disease was due. Such employer may, however, call for a statement from the workman of the name and addresses of his previous employers during the period of twelve months, and if the employer alleges that the disease was in fact contracted in the service of another employer, he may join the latter in any arbitration that may be made against him. The employer in whose service the disease was actually contracted is to be the responsible one. But where a disease is contracted by a gradual process, all the employers during the previous twelve months may be required to contribute to the payment of compensation in such proportions as may be determined by arbitration.

Notice of Disease. Notice of death, disablement, or suspension is to be given to the employer who last employed the workman during the twelve months, and this may be given notwithstanding that the workman has voluntarily left that employment. The date of disablement is such date as the certifying surgeon states in his certificate, or if no date is stated, the date on which the certificate is given.

To establish liability on the employer, the workman must prove that the disease was due to the nature of his employment, and it is immaterial what kind of employment it might be provided the disease is one of those in the scheduled list. If, however, the workman at the time of contracting a disease was employed in the process set opposite that disease in the scheduled list, the disease is deemed to have been due to the nature of his employment, unless the employer proves the contrary, or unless the certifying surgeon certifies it was not so due. The inclusion of the various processes in the Schedule does not imply that the diseases are not covered under the Act, unless contracted in those processes. It

merely shifts the onus of proof from the workman to the employer in such cases.

Crown Employees (Section 9). Persons in the naval or military service of the Crown are excluded from the Act, but ordinary workmen in the Crown's employ are included with this proviso, that the employer is to be the head of that department of the Royal Household in which he was employed at the time of the accident.

Medical Referees (Section 10). This Section provides for the appointment by the Home Secretary of qualified medical practitioners to be medical referees for the purposes of the Act. A duly appointed medical referee cannot act as such in any case in which he has already been employed by the employer, or workman, or any insurers interested.

Detention of Ships (Section 11). Provision is made under this Section for the detention of a ship of which the owners are alleged to be liable to pay compensation under the Act.

Home Office Returns (Section 12). Every employer is obliged to make an annual return to the Home Office in the prescribed form, giving a correct return of the number of injuries in respect of which he has paid compensation, and the amount of such compensation.

By arrangement between the Home Office and the insurance companies, these returns are made by the Offices on behalf of their insured.

Definitions (Section 13). EMPLOYER includes any body of persons whether an incorporated company or not, and includes the legal personal representatives of a deceased employer. Where an employer who has a contract of service with a workman, temporarily lends or lets on hire his services he still remains his employer for the purposes of the Act.

WORKMAN means any person who has entered into a contract of service or apprenticeship with an employer, whether by way of manual labour or otherwise, and whether the contract is expressed or implied, or is oral or in writing.

Exceptions. (*a*) Persons employed otherwise than by way of manual labour whose remuneration exceeds £250 a year.

(*b*) A person whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business.

(*c*) Member of a Police Force, i.e. a Force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force.

(*d*) Outworkers. This means any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home, or on premises not under the management or control of the employer.

(*e*) Members of the employer's family dwelling in his house. Member of family means: wife, husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, or half-sister.

DEPENDANTS. This term is defined to mean such members of the workmen's family as were wholly or partly dependent upon his earnings at the time of his death, or who would have been so dependent but for the incapacity of the workman due to the accident. An illegitimate child may be a dependant, in relation to either his parent or his grandparent, as also may a parent or grandparent be dependent on his illegitimate child.

First Schedule—Scale of Compensation. Compensation under this Act is payable on the following scale—

(*a*) Where death results from the injury—

(1) If the deceased workman leaves total dependants, a sum equal to his earnings with the same employer during the preceding three years, with a minimum of £150 and a maximum of £300. Any weekly payments made prior to the death will be deducted from this sum. If the workman had been less than three years in the service of his employer, his three years' earnings are arrived at by taking 156 times his average weekly earnings.

(2) If the workman leaves partial dependants only, such sum as may be determined by agreement or arbitration to be proportionate to the injury to those dependants, not exceeding the sum of £300.

(3) If the workman leaves no dependants, medical and funeral expenses up to £10.

(*b*) Where total or partial incapacity for work results from the injury—

A weekly payment during incapacity, not exceeding 50 per cent of the workman's average weekly earnings during the preceding twelve months, or any less period during which he had been in the service of the same employer.

EXCEPTIONS. (1) If the incapacity lasts less than two weeks, no compensation is payable in respect of the first week.

(2) If the workman is under 21 at the date of the accident, and his average weekly earnings are less than 20s., he will receive compensation at the rate of his full weekly earnings with a maximum of 10s. per week.

Average Weekly Earnings. Certain rules are laid down in the schedule to define what is meant by average weekly earnings.

(1) Average weekly earnings are to be computed in such a way as may give the most accurate result. If any difficulty arises owing to the shortness of time the workman has been employed, or the casual nature or other terms of the employment, the rate may be calculated by reference to the earnings during the preceding twelve months of a person in the same grade employed at the same work by the same employer, or by a person in the same grade and the same class of employment in the same district.

Much litigation has been caused in interpreting this clause. The same grade means the same rank or class of employee, and has no reference to whether the workman is a good or bad member of his class. The grade of a workman is a question of fact to be decided by the arbitrator.

(2) Where a workman has entered into concurrent contracts of service with two or more employers, he is entitled to bring in his earnings under all the contracts for the purpose of computing his average weekly earnings.

It is not strictly accurate to say, as is sometimes done, that an injured employee is entitled to compensation based on his earnings "from all sources." He can only bring in earnings derived from other contracts of service, which may be only implied contracts and need not be in writing so long as there is evidence of a definite contract. Thus, an employee working as a gardener, who did occasional and irregular work for other people in his spare time,

could not include those earnings as being derived from other contracts of service.

(3) Employment by the same employer means employment by the same employer in the grade in which the workman was at the time of the accident uninterrupted by absence from work, due to illness or any other unavoidable cause.

This clause has considerable importance where the workman has been employed for less than twelve months, in cases of incapacity, or less than three years in cases of death. In order to ascertain the average weekly earnings with the same employer, there must be a period of "continuous employment" without a break. Absence occasioned by illness or an unavoidable cause, as, for example, weather conditions in certain trades, constitute a break, but voluntary absence on the workman's part, or absence on holiday would not. The incidence of this provision may be illustrated by an example.

A workman entered the service of his employer forty weeks before the accident and earned varying amounts each week. After working six weeks he was absent four weeks with an attack of rheumatism. He therefore had been working continuously at the date of the accident for thirty weeks only, and his average weekly earnings would be computed by calculating the total amount earned since he returned from his illness and dividing by thirty, the first six weeks of work being ignored. Supposing, however, the same workman instead of being ill had been absent for his own purposes and of his own free will, there would have been no break in the employment, and his average weekly earnings would be computed by taking the total amount earned from the first day he entered the employment and dividing by forty.

What constitutes an absence by unavoidable cause sufficient to break the continuity of the employment is a matter of fact, and must be determined according to the circumstances of each case.

By this clause a break in the employment is caused by a change in grade, which operates in the same way as the example of illness already given.

(4) Sums paid by the employer to the workman to cover expenses entailed by the nature of the work, are not to be reckoned as part of the earnings.

Partial Incapacity. The weekly payment payable for partial incapacity shall not exceed the difference between the average weekly earnings before the accident and the average weekly amount which the workman is earning or is able to earn after the accident, but shall bear such relationship to that difference as under the circumstances may appear proper.

It should be noted that the test is not what the workman is actually earning, but what he is able to earn. The onus of proof lies on the employer, but having proved the ability, he is not obliged actually to find the work for the workman.

Medical Examinations. Paragraphs 4 and 14 of the first Schedule make provision for a workman to be medically examined. Under Paragraph 4 the employer may require a medical examination at the time that notice of the accident is given. Under Paragraph 14, where a workman is receiving weekly payments, the employer may require periodical examinations. But by Paragraph 15, medical examinations may only be enforced under regulations and at such intervals as may be prescribed by the Home Secretary. These regulations are embodied in the Workmen's Compensation Rules. In every case the doctor is to be provided and paid for by the employer, and if the workman refuses to submit to such examination he forfeits his right to compensation until the examination has taken place.

Medical Referees (Paragraph 15). Where a workman has been medically examined, either by the employer's doctor or by his own doctor, and no agreement can be come to as to his fitness for work, the Registrar of the County Court may refer the matter to a medical referee at a fee fixed by the rules. The medical referee may certify not only as to the condition of the workman, but also as to what extent his incapacity is due to the accident. The medical referee's certificate is conclusive as to the matters specified therein.

Review of Weekly Payments (Paragraph 16). A weekly payment may be reviewed at the request of either party. The review is made by arbitration, and the weekly payment may be ended, diminished, or increased, as the condition of the workman warrants, subject to the limits of compensation laid down by the Act.

A further clause of this Paragraph gives a right of an important nature to an injured workman who is a minor. Where the workman

was at the date of the accident under 21 years of age, and where the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to an amount up to 50 per cent of what the workman would probably have been earning at the time if he had not met with an accident, with a limit of 20s. (since increased by the War Addition Acts to 35s.).

Redemption of Weekly Payments. Weekly payments may be redeemed at any time by agreements between the parties. Paragraph 17 of the first Schedule gives a right under certain conditions to a compulsory redemption.

(*a*) The weekly payment must have continued for at least six months.

(*b*) The application to redeem may be made by or on behalf of the employer only.

(*c*) The amount of the lump sum payable as redemption is fixed—

(1) If the incapacity is permanent, at such an amount as would if invested in the purchase of a Post Office annuity, purchase an annuity for the workman equal to 75 per cent of the annual value of the weekly payment.

(2) Where the incapacity is not permanent, such a sum as may be settled by arbitration.

The provisions of this paragraph do not apply to amounts payable under the War Addition Acts.

Workman Leaving the United Kingdom. A workman who ceases to reside in the United Kingdom, loses his right to weekly compensation unless a medical referee certifies that his injury is likely to be permanent. In such case, compensation is payable quarterly in manner prescribed under the Workmen's Compensation Rules.

Payments into Court. The amount of compensation due from an employer must in certain instances be paid into the County Court.

(*a*) In cases of death (Schedule 1, Paragraph 5).

But if the workman left no dependants, the amount due may be paid to his legal personal representatives, or failing these, to the person to whom the expenses of medical attendance or burial are due.

(*b*) In cases of incapacity (Paragraph 7).

Weekly payments due during incapacity are only to be paid into

Court if the workman entitled thereto is a person under any legal disability, as if the workman is a minor or not of sound mind. It may be noted that even in such cases, the wording of Paragraph 7 says that the Court *may*, on application being made, order the weekly payment to be paid into Court.

Second Schedule (Arbitration). The second Schedule to the Act prescribes the mode in which questions arising under the Act are to be settled. This Schedule is closely related to the subject of Court Procedure, but certain of its salient points may usefully be discussed.

The general mode of settling any question under the Act is by arbitration (*vide* Clause 1, Section 3).

By Paragraphs 1 to 3 of the second Schedule this process of arbitration is defined. A special form of arbitration is set up, which is not governed by the provisions of the Arbitration Act, 1889 (*see* Paragraph 4).

The arbitration may be held in three different ways—

(1) By a committee representative of an employer and his workmen.

(2) By a single arbitrator agreed on by the parties, or, failing agreement, by the Judge of the County Court sitting as an arbitrator.

(3) By an arbitrator appointed by the County Court Judge in cases where the Lord Chancellor authorizes such an appointment.

The arbitrator may submit any question of law to the County Court Judge. Appeals from the decision of the arbitrator lie direct to the Court of Appeal in England and Ireland, or to the Court of Session, in Scotland, with a final appeal to the House of Lords.

Recording Agreements (Paragraph 9). Where any matter has been decided under the Act, whether by arbitration or by agreement, a memorandum must be sent to the registrar who, subject to his being satisfied on certain points, will record the agreement which then becomes enforceable as a County Court judgment.

The agreement is not to be recorded until after seven days have elapsed since notice of its existence was served on the parties.

If the registrar is not satisfied to record the agreement, he may refer the matter to the judge for decision.

Agreements sent to the registrar for recording, refer, in the majority of cases, to lump sum settlements or to the amount of

a weekly payment. It was held in the well-known case of *Ryan* v. *Hartley* that an agreement for a lump sum settlement need not be recorded if no previous weekly payments had been made.

Otherwise, if an agreement is not recorded, it is not conclusive against the workman, and does not exempt the employer from liability to pay further compensation should the circumstances of the case warrant it (Paragraph 10). An agreement to pay compensation weekly or otherwise, to a person under a legal disability or to a dependant must always be registered, in order to exempt the employer from further liability, unless he can show that the omission to register was not due to his fault or neglect.

Third Schedule (Diseases). The third Schedule gives a list of industrial diseases which, with its extensions, has already been set out.

WORKMEN'S COMPENSATION (WAR ADDITION) ACT, 1917.

This Act was passed to meet the increase in the cost of living occasioned by the war, and to bring the scale of compensation under the Act of 1906 more into line with current needs. It applies only where a workman is entitled to a weekly payment under the Act of 1906 in respect of *total incapacity*, and provides for an addition to that weekly payment of one-fourth of the amount, so that a workman receiving compensation of 20s. per week would have it increased to 25s. per week. This additional sum could not be redeemed by a lump sum payment (under Paragraph 17 of the First Schedule) even though the original weekly payment might be so redeemed. It may, of course, be redeemed by agreement between the parties. The Act came into force on 1st September, 1917, and is to continue in force for a period of six months after the termination of the war. This Act, together with the amending Act of 1919, has been extended, under the Expiring Laws Continuance Act, up to 31st December, 1922.

WORKMEN'S COMPENSATION (WAR ADDITION) AMENDMENT ACT, 1919.

This was an amending Act to increase the addition to the weekly payments, provided by the Act of 1917. By this Act the increase instead of being one-fourth, is to be three-fourths of the amount

provided under the Act of 1906. Thus, a workman receiving 20s. per week under that Act would now receive 35s. per week. The 1919 Act goes a step further, and provides that the additional amount shall also be added to any weekly payments which may be in force under the Workmen's Compensation Acts, 1897 and 1900, thus remedying an unintentional omission under the Act of 1917. The Act of 1919, being an amending Act, stands or falls with the Act of 1917, and the two Acts are cited together as the Workmen's Compensation (War Addition) Acts, 1917 and 1919.

WORKMEN'S COMPENSATION (ANGLO-FRENCH CONVENTION) ACT, 1909.

On the 3rd July, 1909, a convention was signed between the British and French Governments, whereby British subjects who meet with accidents arising out of their employment as workmen in France can secure benefits granted in such cases under the French law, and reciprocally, French citizens working in the United Kingdom can secure benefits under the English law.

By the provisions of the above Act, the King is empowered by order in Council to make such modifications of the Workmen's Compensation Act, 1906, as appear to be necessary to give effect to the convention. This Order in Council was duly made on the 22nd November, 1909, and its main provisions are as follows—

The Workmen's Compensation Act, 1906, shall apply to workmen who are French citizens, subject to the following modifications—

(1) An employer having his principal place of business in France shall not be liable to pay compensation under the Act to a workman who is a French citizen,

(*a*) If the workman has been temporarily detached for employment in the United Kingdom, and such employment has at the time of the accident lasted less than six months;

(*b*) If the workman is employed in transport service, and is employed at intervals, whether regular or not, in the United Kingdom.

In all other cases a French citizen meeting with an accident arising out of and in course of his employment in the United Kingdom, is entitled to the same compensation under the Act of 1906 as if he had been a British subject.

(2) All questions as to the liability to pay such compensation or the amount thereof, or the redemption of a weekly payment are to be settled by the Judge of the County Court, and in no other manner. That is to say, no other form of arbitration is permissible in spite of the provisions of the second schedule to the Act.

(3) If a weekly payment has been redeemed by a lump sum sufficient to purchase a Post Office annuity of over four pounds, the lump sum shall be paid into the County Court and invested in the purchase of an annuity.

(4) Where a lump sum payable, either in redemption of a weekly payment, or as compensation to the dependants of a deceased workmen ; then

(*a*) if the workman returns to reside in France ; or

(*b*) if the dependants resided in France at the time of the death or subsequently returned to reside in France, the said lump sum shall be transferred to the "Caisse Nationale Française des Retraites pour la Vieillesse."

(5) Where a workman receiving a weekly payment returns to reside in France, the amounts due shall be remitted to him through the County Court at such intervals and in such manner as may be prescribed by agreement between the British and French authorities.

This section overrides Paragraph 18 of the First Schedule to the Act, which provides that an injured workman loses his right to weekly compensation if he ceases to reside in the United Kingdom, unless he is permanently incapacitated.

(6) No Court fee or other charge shall be payable by the workman in respect of any proceedings under the Act.

(7) The Registrar of the County Court shall send each year to the Home Secretary a record of all judicial decisions given under the Act in the case of French citizens, which record shall be communicated to the "Department du Travail et de la Prevoyance Sociale."

The Order applies to all accidents happening on and after the date on which the Convention takes effect, and shall cease to have effect one year after the date on which the Convention may be denounced by either of the parties thereto.

WORKMEN'S COMPENSATION (ILLEGAL EMPLOYMENT) ACT, 1918.

This Act was passed to remedy an obvious injustice. Where a workman was employed in an illegal manner there was no valid contract of service, and the workman was not, therefore, a workman within the meaning of Section 13 of the Act of 1906. If such a workman was injured in the course of his employment, he had no claim to compensation. There are two leading cases on this point: *Kemp* v. *Lewis* (1914) was decided against the workman on the ground that the employment was in violation of the Truck Acts, whilst in the case of *Pounteney* v. *Turton* (1917), a child employed in contravention of the Children's Act, 1903, was non-suited in a claim for compensation. This led to the passing, in 1918, of the Illegal Employment Act, which provides as follows—

If on any proceedings for the recovery under the Workmen's Compensation Act, 1906, of compensation for an injury, it appears to the arbitrator that the contract of service or apprenticeship under which the injured person was working at the time of the accident, was illegal, the arbitrator may, if having regard to all the circumstances of the case, he thinks it proper to do so, deal with the matter as if the injured person had at the time been working under a valid contract of service or apprenticeship.

The effect of this is that a person in illegal employment is not thereby to be debarred from his right to compensation, but the arbitrator has a discretionary power to make an award in the workman's favour if he thinks fit.

CHAPTER III

The Contract of Insurance

Part I—The Proposal Form

Workmen's compensation insurances may be divided into two broad divisions—

(1) Risks rated on a *per capita* basis.
(2) Risks rated at a percentage on the wage-roll.

"PER CAPITA" BASIS.

This class includes domestic servants, gardeners, coachmen, and every kind of servant ordinarily employed in a private house, but only when they are so employed. There are one or two other kinds of risk rated in this way, as office cleaners, or yacht hands, but these are of comparatively minor importance. For the purpose of the classification of the business, the domestic servant class may be taken to represent the risks rated *per capita*, i.e. at so much per head.

PERCENTAGE BASIS.

All other risks are rated at a percentage on the annual wage-roll. In a later chapter the exact way in which this is carried out will be discussed. The purpose of this chapter is to examine in detail the forms of proposal in use for workmen's compensation business. Different forms are required for each of the two main branches.

PROPOSAL FORMS.

(A) Domestic Servants' Insurance. This form is of a very simple nature; the information required has been reduced to a minimum, and in some cases a form may be dispensed with altogether. This, however, is not a sound practice. The conditions under which domestic servants are employed do not greatly differ as between one house and another; their work is of a very similar nature, and their wages conform more or less to a recognized

standard. Hence, there is not the need for the same detailed information as is necessary in trade or business risks.

The following questions should be found on the proposal form—

1. Name of employer.
2. Address.
3. Total number of permanent servants employed.
4. Under which Table is the policy to be issued ?
5. Are occasional servants, such as charwomen, jobbing gardeners, etc., to be insured ?

SCHEDULE

NUMBER.	DESCRIPTION.	PREMIUM.
	Indoor Domestic Servants . . . . Gardeners . . . . . . Coachmen . . . . . . Grooms or Stable Hands (not hunting) Chauffeurs	*For office use only.*

DECLARATION. I hereby declare that the above answers are true and that I have withheld no information material to this proposal. I agree that this proposal shall be the basis of the contract to be issued between me and the.....Company, Ltd.

Employer's Signature.....

Date.....

There are a number of points to be noticed in connection with this form.

3. TOTAL NUMBER OF SERVANTS. It is important that the Office should know the total number of servants employed, as it is a condition of the policy that all the servants of a class shall be insured.

4. TABLE TO BE INSURED. This has reference to the scope of the insurance, whether to cover legal liability or various extended benefits. These will be explained in the chapter on domestic servants' insurance.

5. OCCASIONAL SERVANTS are insured under a comprehensive clause.

DECLARATION. This binds the proposer as to the truth of his various statements, and effects an agreement between the parties to make the proposal the basis of the contract.

(B) General Proposal Form. This form is applicable to risks

which are rated at a percentage on the wages. It applies generally to office, shop, or warehouse risks, and to manufacturing and industrial risks generally. The details required by the Office to enable it to rate the risk are much more complicated owing to the varying conditions under which different trades are carried on, and the different processes affecting the hazard. Surveying of risks for employer's liability is not relied upon to any great extent, and it is therefore of the first importance that all the necessary information should be ascertained from the particulars on the proposal form. For risks of this nature the form is never dispensed with—and this is a fundamental characteristic of the business.

There is sometimes a tendency on the part of the unthinking to deprecate the use of forms, but for general workmen's compensation insurance a proposal form is essential and for this reason. The business itself, and the conditions affecting the hazard, are of so technical a nature that the average proposer could not reasonably be expected to know what facts were material to his proposal. But, as in all contracts of insurance, the company is entitled to be put in possession of all the material facts. If this were simply left to the proposer, endless disputes would inevitably arise, and the proposal form with its set of questions to ascertain the exact information required avoids all trouble in this respect.

The form of proposal in general use is as follows—

1. Proposer's Name in full.
   Business Address.
   Trade or Occupation.
   Particulars of work done.

2. Do your premises constitute a factory within the meaning of the Factory and Workshop Act, 1901 ?

3. (*a*) Have you any circular saws or other machinery driven by steam, gas, water, electricity, or other mechanical power ? If so, give full particulars.

(*b*) Are your machinery, plant, and ways properly fenced and guarded and otherwise in good order and condition ?

4. Are your boilers insured against explosion ? If so, with whom ?

5. State what acids, gases, chemicals, or explosives will be used and to what extent.

6. Have you any other insurance in force with this company ? If so, please state departments.

7. (*a*) Are you at present insured or have you ever proposed for an insurance in respect of your liability to your employees ? If so, please give name of company.

(*b*) Has any such proposal or renewal ever been declined or withdrawn ?

8. State number of accidents to your employees and cases of disease incidental to their occupation during the past three years.

	Fatal.	Permanent Disablement.	Temporary Disablement.
	No. Compensation paid to date.	No. Compensation paid to date.	No. Compensation paid to date.
19.....	..... £.....	..... £.....	..... £.....
19.....	..... £.....	..... £.....	..... £.....
19.....	..... £.....	..... £.....	..... £.....
	Claims unsettled. No. Estimated further cost.	*Claims unsettled.* No. Estimated further cost.	*Claims unsettled.* No. Estimated further cost.
	..... £.....	..... £.....	..... £.....

SCHEDULE

All Persons Employed Must be Included

A sum of £12 10s. per annum in respect of each person boarded or lodged, and at the rate of £25 per annum in respect of each person boarded and lodged must be added to the wages as the value of the board and/or lodging, when provided, and a sum at the rate of £40 per annum for each apprentice, learner, or errand boy to shopkeepers and workroom proprietors and at the rate of £60 per annum each for articled pupils and all other apprentices, whether indentured or not.

Description of Employees.	Estimated Number of Employees.	Estimated Annual Wages, Salaries, and other Earnings.			Rate per cent.	Premium.
		Cash.	Board and Allowances.	Total.		For Office Use Only.
Clerical Staff						£ : :
Commercial Travellers . . .						£ : :
Employees engaged with wood-working machinery, including machinists and machinists' labourers						£ : :
						£ : :
All Other Employees. . . .						£ : :
Do you wish to insure your liability to the workmen of sub-contractors? If so, state nature of work you sub-let . . . . . Estimated amount of contracts						£ : :
Total Premium for legal indemnity						£ : :
Add 7½% to premium if compensation is required to commence from the first day of disablement where liability during the first week does not exist						£ : :
Total Premium including first week of disablement.						£ : :

Declaration. I/we the undersigned desire to effect an insurance in terms of the policy to be issued by the company against my/our statutory and common law liability as above mentioned. I/we agree to render at the end of each period of insurance a statement in the form required by the company of all wages actually paid and to pay premium on any wages paid in excess of the amount estimated above. I/we hereby declare that all the above statements and particulars which I/we have read over and checked are true,

that I/we have not suppressed, misrepresented, or misstated any material fact. That I/we have fairly estimated my/our total wages and salaries expenditure, and I/we agree that this declaration shall be the basis of the contract between me/us and the ..... Company, Ltd.

Signature of Proposer.....

Date.....

It will be seen that this form is very full and comprehensive in its scope, and will repay a detailed examination.

(1) The name, address, and trade of proposer must be given with exactitude. This applies especially to the trade. Many trades, though closely akin, are different in their hazard and require a different basis of rating. The particulars of work done are of assistance in this particular. Thus, a proposer might describe himself as an electrical engineer. By itself this would not give sufficient information, but if the particulars of work done disclosed—erection of lighting plant, or making of generating plant, the company would have the requisite details to enable it to quote a premium.

(2) This question is necessary to enable the company to make certain returns to the Home Office under Section 12 of the Workmen's Compensation Act, 1906. The subject of these returns is dealt with on a subsequent page.

(3) Machinery. The question of machinery is of the utmost importance. It is obvious that the risk of accident is greatly increased by the use of machinery, and especially when that machinery is driven by mechanical power. Details of all machines used must be given, and also whether they are properly fenced and guarded. An untrue answer to this question would be a suppression of a material fact sufficient to void the whole contract.

(4) Boilers. The point of this question is that if the boilers are insured against explosion, the company insuring them will have taken steps to satisfy themselves that the boilers are in good condition. Periodical inspections will be made, and every precaution taken to minimize the risk. All this is to the advantage of the workmen's compensation hazard.

(5) Acids, Gases, Chemicals, Explosives. The answer to this question throws some light on the nature of the various processes carried on from the point of view of the risk of accident. Cases where a large quantity of chemicals is used are examples of where

a survey is desirable, in order to obtain more precise information so far as it can be given without, of course, disclosing trade secrets.

(6) OTHER INSURANCES; (7) (*a*) PREVIOUS INSURANCES; (*b*) PREVIOUS HISTORY. These questions find a place in most proposal forms. They are for the purpose of putting the company in possession of all such facts as they are entitled to know. These questions are more particularly directed at investigating the moral hazard, and the answers are essentially material facts.

(8) PREVIOUS EXPERIENCE. This is to ascertain the degree of physical hazard associated with the risk. If a proposer discloses a number of accidents above the average for his trade, there is evidently something connected with the management or otherwise operating adversely, which calls for some investigation.

SCHEDULE. This gives the particulars in the required form of the employees to be insured. A further discussion of the schedule will be found in the chapter on trade risks.

DECLARATION. This is a most important part of the proposal form, and contains undertakings on the part of the proposers in various respects. When analysed the declaration is found to deal with the following points—

(*a*) Agreement to accept a policy in the usual form.

(*b*) Agreement to render an annual return of wages and to pay excess premium if required.

(*c*) Declaration of the truth of the statements, and that no suppression or misrepresentation of material fact has been made.

(*d*) Declaration that the wage-roll has been fairly estimated.

(*e*) Agreement that the declaration shall be the basis of the contract.

These provisions have to do with the particular features of the contract, and the proposer will not be able to plead ignorance in any matter relating thereto, nor to allege that the facts were not as stated.

In addition to the forms of proposal already referred to special forms are used for one or two special risks as collieries, farm and estate risks. These are designed to bring out information referring to these particular risks, though much of the information required is similar to that given on the general proposal form. Further particulars of these special forms will be given in the chapter dealing with those classes of risk.

CHAPTER IV

The Contract of Insurance

Part II—The Policy Form

Two forms of policy are in general use for workmen's compensation business—

(1) Domestic servants' form.
(2) General form.

DOMESTIC SERVANTS' POLICY FORM.

This is perhaps the simplest of all policy wordings, and it contains one peculiarity worthy of special notice—it does not, in the majority of cases, contain an arbitration clause. This is a feature in which the domestic servants' policy differs from most other forms of insurance policy.

It will be remembered that this particular form of policy only came into existence in 1907, when the Act of 1906, extending liability to domestic servants, came into force. This extension of liability had a widespread effect, and touched a large number of people who had not previously been legally liable to compensate their employees. The innovation, accordingly, became a matter of public interest, and was taken up by the Press. The result was that a form of policy was drafted by certain newspapers—notably the *Daily Mail* and *Daily Telegraph*—very clear and simple in wording, which, owing to the pressure of public opinion under journalistic encouragement, the companies were forced to adopt. Whilst admitting that the simplification of wording is of advantage to both parties to the contract, it may be regretted that this resulted in the omission of the arbitration clause. This omission rather tends to confirm the widely held opinion that the clause is inimical to the insured's interests, an idea which, though prevalent, is far from the truth and ought to be combated by insurance men on all occasions. The advantages of the arbitration clause, both to the company and to the insured, are entirely mutual, and there seems no good reason why the clause should have been

omitted from the domestic servants' policy. It may be remembered, however, that disputes, if any, arising in connection with claims will generally lie between the company as representing the insured and the injured servant, and these disputes have to be settled by arbitration in accordance with the machinery provided by the Act, though such arbitration is different and entirely distinct from arbitration under the policy.

The form of policy in general use runs as follows, though it may be noted there is no standard form.

Preamble.

Whereas ..... (hereinafter called the employer) has made to the ..... Insurance Company, Ltd. (hereinafter called the company) a proposal and declaration dated..... which are declared to be the basis of this contract.

In common with other forms of accident business, the proposal is made the basis of the contract, so that the terms of the agreement are dependent upon the information supplied by the insured in the proposal. It has been noted that on occasion for this class of insurance a proposal is dispensed with, and when this is done the policy requires alteration accordingly.

Clause I (Operative Clause).

Now this policy witnesseth that in consideration of the payment by the employer of the first premium for this insurance and of the observance by the employer of the conditions of this policy, the company agree to indemnify the employer in respect of his legal liability to pay compensation to any servant described in the schedule hereto under the Workmen's Compensation Act, 1906, or under any prior statute or under the common law, arising at any time from the ..... day of ..... 192....., and before four o'clock in the afternoon of the ..... day of ....., 192.... or before four o'clock in the afternoon of the last day of any subsequent period during which this policy may be renewed, including in such indemnity any expenses incurred by the employer with the consent of the company in resisting or defending any claim for such compensation.

There are several points in this clause which call for comment.

(1) The Consideration. This is the amount of the first premium, or of the annual premium when the policy is renewed. An agreement executed under hand, as most domestic servants' policies are, requires consideration to make it effective, and the policy only comes into force when the premium is paid. The premium, however, is not the only consideration. In addition there is the observance by the employer of the conditions of the policy.

It should be remembered that the consideration for an agreement need not necessarily consist of a sum of money. It may include something to be done by one party to the contract. Hence it is an essential part of the consideration for this particular form of policy that the employer shall duly observe the conditions thereof.

(2) THE INDEMNITY. This defines the scope of the cover and consists of an indemnity against the employer's legal liability. This liability may arise under the Workmen's Compensation Act, 1906, or under any prior statute or at common law. Liability for purely domestic servants would not arise under the Employer's Liability Act, 1880, but it might arise under the Fatal Accidents Act, 1846, or at common law. At the time of writing this provision of the policy requires extension—generally done by endorsement—to include the liability arising under the Workmen's Compensation (War Addition) Acts, 1917 and 1919.

(3) PERIOD OF INSURANCE. Policies are not uniform in this respect. Some offices make the insurance run from noon to noon; others commence after 4 o'clock on the first day. The most usual practice, however, seems to be for the insurance to be stated to commence on the day on which cover is granted and to end at 4 o'clock, i.e. the recognized closing hours—on the same day a year hence—or on a subsequent quarter day, as the case may be.

Fifteen days of grace are allowed for renewal. This is not provided for by the conditions of the policy, but arises out of a recognized custom of the business, and no company would ever dispute it provided, of course, that the employer had an intention to renew.

(4) COSTS. In addition to the legal liability, any costs or expenses incurred in resisting or defending a claim are included provided that the consent of the company had been obtained before the costs were incurred. The company, with its greater experience, is obviously entitled to a deciding voice in the matter of contesting a doubtful claim.

Clause II (Additional Servants).

This policy shall extend to cover the successor of any insured servant without notification to the company. If during any period of insurance there shall be any increase in the total number of domestic servants in the service of the employer of any of the descriptions referred to in the schedule to this policy, then the employer shall, on the expiry of such period of

insurance, furnish the company with a statement of the total number of domestic servants employed in his service during that period, and shall pay an appropriate additional premium for every additional servant, of a description already insured, and in the meantime each such additional servant shall be included in the insurance hereby effected.

The effect of this clause is to ensure—

(1) That a certain number of servants of certain descriptions shall be insured irrespective of the personnel of the employer's staff.

(2) That the whole staff shall be insured without the necessity of advice by the employer on the occasion of every addition, provided notice be given at renewal and additional premium paid. But additional servants of a different class from those already covered, are not within the protection of this clause. Such must be advised to the company at the time of their engagement.

Clause III (Claim Procedure).

The employer shall give immediate notice of any accident causing injury to a servant, stating the date of the accident, the name of the injured servant, and the injuries sustained, and the employer shall notify the company as soon as practicable of any claim made by a servant, and forward the same to the company in writing and shall give all information and assistance which the company may reasonably require in relation to the claim. The employer shall not, without the written authority of the company, settle any claim or admit any liability except at his own cost, and the company may, but at their own cost, assume, so long as they may think proper, the absolute conduct and control of and use the name of the employer in any negotiation, action, or proceedings in connection with any claim, and enforce for the benefit of the company any order made for costs or otherwise, or any rights of indemnity against other parties.

By the provisions of this clause two obligations are laid upon the employer—

(*a*) To give immediate notice of any accident to an insured servant. This applies whether the accident results in a claim or not.

(*b*) To notify as soon as practicable any claim made by a servant and to deliver to the company the necessary particulars thereof.

If the employer deals with any claim in any manner without the consent of the company, he does so at his own cost.

The company may, if it thinks fit, take over the conduct of any necessary proceedings. Some controversy has arisen as to the use of the permissive word "may." It is contended in some quarters that the company should be bound to relieve the employer of all such litigation or proceedings. A little thought, however,

will show that the company must reserve to itself a discretion in the matter, otherwise a vindictive employer might compel the company to contest a claim which it would prefer to settle. As a matter of practice, the company invariably conducts the case when a claim is contested, and in any event if the company does not choose to contest it must necessarily pay the amount of the claim.

The company may enforce in the name of the employer any rights against other parties. This is by virtue of the doctrine of "subrogation," under which one person paying a claim for a given event may recover the amount paid from another person liable in respect of that event. This right is inherent in the company under the rules of common law, but its insertion in the policy enables the company, if necessary, to sue in the employer's name.

Clause IV (Notices).

Every notice to be given by the employer shall be in writing and shall be sent to the principal office of the company or to any branch office, and no notice received by the company otherwise shall be deemed to be notice to them.

Execution of Policy. The policy is signed on behalf of the company by an authorized official, or it may be executed under seal.

The stamp duty on workmen's compensation policies follows the general rule as to agreements, i.e. 6d. if executed under hand or 10s. if under seal. For this reason such policies are seldom if ever sealed. It may be noted that the duty of 6d. is reduced to 1d. when the annual premium on the policy does not exceed £2. (Finance Act, 1907).

GENERAL POLICY FORM.

This form of policy is applicable to all risks except domestic servants, and comprehends all classes of risk rated on a wage basis. These risks are of a much more complicated nature than domestic risks, and the form of policy is not by any means so simple, various clauses being necessary to meet the fact that the insurance is in respect of a trade or business. The form in use amongst the leading companies is a standard one, and has stood the test of many years' experience. The student of workmen's compensation insurance may gain a good insight into the business by a study of this form of policy.

Preamble.

Whereas..... (hereinafter called the insured), of ..... carrying on the business of ..... and no other for the purposes of this insurance, has made to the ..... Insurance company, Ltd. (hereinafter called the company) a written proposal and declaration dated ..... containing certain particulars and statements which it is hereby agreed shall be the basis of this contract and be considered as incorporated herein.

This differs from the domestic servants' policy in referring to the insured's business. The words "no other for the purpose of this insurance" are important. They imply that the policy is issued to cover only those employees of the insured who are engaged in the business referred to in the policy.

Operative Clause. This clause again differs in some respects from the corresponding clause in the domestic servants' policy, and for the sake of comparison it is given in full.

Now this policy witnesseth that in consideration of the payment to the company of the above mentioned premium (which premium is subject to adjustment as hereinafter provided) for the following indemnity from the ..... day of ..... 192....., to four o'clock in the afternoon of the ..... day of ..... 192....., it is hereby agreed that if at any time during the said period subject to the receipt of premium as provided in the conditions hereof, and during the continuance of this policy by renewal any employee in the insured's immediate service shall sustain any personal injury by accident or disease as described in the third schedule to the Workmen's Compensation Act, 1906, while engaged in the service of the insured in work forming part of or process in the business above mentioned, and in case the insured shall be liable to make compensation for such injury either under the Fatal Accidents Act, 1846, the Employers' Liability Act, 1880, the Workmen's Compensation Act, 1906, or at common law, the company shall indemnify the insured against all sums for which the insured shall be so liable, and will in addition be responsible for all costs and expenses incurred with its consent in defending any claim for such compensation. Provided always that the due observance and fulfilment of the conditions of this policy, which conditions are to be read as part of this policy, shall be a condition precedent to any liability of the company under this policy.

It will be noted that this clause goes somewhat further than the domestic servants' policy clause, and it will be sufficient here to note what the differences are. An explanation of the need for the various provisions of this form of policy is given in the chapter dealing with trade risks.

(1) The Consideration. The first premium forms the consideration, but only subject to adjustment at renewal.

(2) Diseases. The liability arising under the third schedule to the Act of 1906 is specially referred to as being mainly applicable to trades or industries.

(3) EMPLOYEES. The employees must be in the insured's immediate service (thus excluding employees of sub-contractors) and must be engaged only in connection with the trade or business mentioned in the policy.

(4) CONDITION PRECEDENT. This is an important qualification, the incidence of which will be fully explained later. It is of the essence of workmen's compensation insurance.

Policy Conditions. The following conditions are those usually found in a policy of this kind—

CONDITIONS

1. Every notice or communication to be given or made under this policy shall be delivered in writing at the head office or any branch office of the company.

2. The insured shall give notice to the company of any accident or disease covered by this policy as soon as practicable after the accident or disease or any incapacity arising therefrom comes to the knowledge of the insured or of the insured's representative for the time being, and shall forward to the company forthwith after receipt thereof every written notice or information as to any verbal notice of claim and all proceedings.

3. The insured shall not incur any expense, litigation or otherwise, or make any payment, settlement, or admission of liability in respect of any injury for which the company shall be liable under this policy without the written authority of the company. The company shall in respect of anything under this policy be entitled to use the name of the insured, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the company. The insured shall give all necessary information and assistance and forward all documents to enable the company to settle or resist any claim as the company may think fit.

4. The insured shall take reasonable precautions to prevent accidents and to comply with all statutory obligations.

5. The first premium and all renewal premiums that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid to employees by the insured during each period of insurance. The name of every employee and the amount of wages, salary, and other earnings paid to him shall be duly recorded in a proper wages book. The insured shall at all times allow the company to inspect such books and shall supply the company with a correct account of such wages, salaries, and other earnings paid during any period of insurance within one month from the expiry of such period of insurance, and if the total amount so paid shall differ from the amount on which the premium has been paid the difference in premium shall be met by a further proportionate payment to the company or by a refund by the company as the case may be.

6. Unless specifically included by endorsement hereon, the indemnity granted under this policy or any renewal thereof shall not apply to the insured's liability to employees in the employ of sub-contractors to the insured.

7. The company shall not be liable in respect of any accident or disease occurring before the actual receipt of premium by the company or its authorized agents, or in respect of any accident or disease occurring after the date of expiry and before the actual receipt of the premium for renewal.

8. If any question or difference shall arise touching the meaning of this

policy or its conditions, or as to the rights, obligations, or liability of either party hereunder, the same shall be referred to two arbitrators (one to be appointed by each party) under the statutory provisions in that behalf for the time being in force.

(The wording of this clause differs amongst different offices.)

Some comments on these conditions may be of assistance to the reader.

(1) METHOD OF NOTICE. Notices must be given in the prescribed manner. This is for the protection of the company and to avoid disputes.

(2) CLAIM PROCEDURE. (*a*) Notice of accident or disease to be given as soon as practicable after it comes to the knowledge of the insured or of his representative. The insured himself may not be in close touch with his workmen, but the knowledge of his authorized representative is deemed to be knowledge of the insured.

(*b*) Particulars of claim to be forwarded *forthwith.* This, of course, refers to a claim made by an employee in respect of accident or disease.

(3) INSURED DEALING WITH CLAIM. This clause is practically identical with that given in the domestic servants' policy. Its general effect and its necessity from the company's point of view have already been explained.

(4) PRECAUTIONS BY INSURED. The insured is to take all reasonable precautions to prevent accidents and to comply with all statutory obligations. There are a number of Acts in force regulating the conduct of an employer towards his workpeople, the chief of which is the Factory and Workshop Act, 1901. This condition provides a warranty by the insured to observe all such regulations. The first part of the clause referring to precautions against accidents may, however, give rise to some difficulty in interpretation. In its widest sense it would bar the employer from a claim under his policy whenever the accident resulted from his negligence. This, however, is clearly not the intention, as the liability under the Act of 1880, which is included in the scope of the cover, arises purely out of negligence. The intention is that where an employer has been grossly and culpably negligent or has allowed a state of affairs to continue in his business which he knows full well is dangerous to his employees, he will lose his right to indemnity under the policy.

(5) Wages Statement. This clause provides for the method of adjusting the premium, and is one of very considerable importance. It will be discussed more fully when the methods of insuring trade risks are dealt with.

(6) Exclusion of Sub-contractors' Employees. As we have seen, only the immediate employees of the insured are to be covered. But under Section 4 of the Act of 1906 an employer is in certain circumstances responsible for accidents to workmen in the employ of sub-contractors. This liability is excluded by this condition, but it may be specifically included by endorsement.

(7) Arbitration. This clause finds a place in every general workmen's compensation policy. The considerations which prevented its use for domestic servants' insurance did not apply to trade or business risks.

CHAPTER V

Domestic Servants' Insurance

The insurance of domestic servants includes all servants engaged in or about and incidental to the purposes of a private residence. The following classes of employee come within the scope of this definition—

Indoor domestic servants.

Gardeners.

Coachmen and grooms.

Chauffeurs.

It may here be noted that "indoor servants" does not necessarily mean that the servants live in. The term "indoor" refers solely to the nature of their duties. Indoor duties comprehend all such as pertain to the internal arrangements of the house. Thus, a boot boy would be classified as an indoor servant, even though he might do much of his work in the stable.

An indoor servant may be one who lives out, as a daily servant or charwoman, whilst an employee engaged in outdoor work such as gardening is classified as an outdoor servant, even though he may have living quarters in the house. It is important to bear this distinction in mind.

All domestic servants employed in a private house are rated for premium at so much per head (or as it is termed on a *per capita* basis), irrespective of the amount of their earnings or whether they receive board and lodging. There are two broad divisions of this section of the business—

(1) Insurance against legal liability only.

(2) Insurance against legal liability with various extended benefits.

LEGAL LIABILITY.

In the examination of the domestic servants' policy the legal liability of an employer has already been referred to. It covers

all sums for which the employer may be liable under any of the following statutes, viz.—

Fatal Accidents Act, 1846;

Workmen's Compensation Act, 1906;

Workmen's Compensation (War Addition) Act, 1917;

Workmen's Compensation War Addition (Amendment) Act, 1919, and also any liability that may arise at common law.

As already mentioned, liability in respect of domestic servants does not arise under the Employers' Liability Act, 1880.

The conditions under which liability exists and the scales of compensation payable have already been discussed, and need not be further referred to here.

EXTENDED BENEFITS.

The origin of the various schemes to provide extended benefits for domestic servants may be traced to the close relationship which exists between master and servant and the relative permanence of such employ. Industrial workers, to whom originally workmen's compensation legislation was intended to apply, were on an entirely different footing. The personal factor between employer and employee was not so prominent as in domestic service. If such a workman was absent from his work, by the custom of his trade, he generally received no pay. If, therefore, his absence from work was due to an accident arising out of and in course of his employment, his statutory compensation took the place of his wages and the whole matter, being more or less on a business footing, the employer would not usually desire to go any further than the strict legal requirement. With domestic servants the position was otherwise. Such servants are paid monthly, and in many cases part of their remuneration consists of board and lodging. In the event of illness or accident the employer would very frequently have the servant attended to in his own house, and continue payment of wages as if the servant had been in good health. This is looked upon as a kind of moral responsibility.

As soon, therefore, as domestic servants were brought within the operation of the Workmen's Compensation Act, it became evident that an indemnity against legal liability only would not suffice to make good to the employer all the necessary expenses

to which he would be put in the event of an accident to his servant. Thus arose the different schemes for extended benefits. The chief of these and the one most frequently in use provides as follows—

(*a*) Payment of the full wages in lieu of half-wages of a disabled servant for a period not exceeding four weeks from the commencement of disablement, during which such servant is totally incapacitated for work as the result of an accident arising out of and in the course of employment.

(*b*) Payment of the cost of board and lodging of a disabled servant, but for a period not exceeding four weeks from the commencement of disablement and limited to 10s. per week.

(*c*) Payment of reasonable medical and surgical expenses occasioned by such an accident up to but not exceeding £5 in respect of any one accident.

These benefits are granted in addition to the employer's full legal liability as defined by the policy. This means that should disablement continue for more than four weeks, the policy will provide compensation on the legal liability scale for as long as disablement may continue, but, of course, during the first four weeks no more than full earnings are payable. The compensation for legal liability is not payable *in addition* during that period. A limit of 10s. per week as the value of board and lodging is hardly adequate in modern times, but no general alteration of the amount has yet been made. What constitutes *reasonable* medical or surgical expenses is a matter to be decided on the merits of each case. Generally it will include attendance by the employer's own doctor, but specialists' fees would as a rule only be warranted by the extreme urgency of the case or a reasonable expectation of considerably curtailing the period of incapacity. Nothing is payable where the servant is attended by a panel doctor under the National Insurance Act.

Though the before-mentioned scheme is by far the most frequently used, there are other schemes in existence, details of which may be shortly given.

(1) **Full Wages for Twenty-six Weeks.** Payment of full wages and cost of board and lodging up to an amount of £2 altogether

per week in respect of any period not exceeding twenty-six weeks from the commencement of disablement, during which a servant is totally incapacitated as the result of an accident arising out of and in course of the employment.

(2) **Compensation for Diseases.** This scheme follows the lines of the first scheme referred to in providing—

(*a*) Full wages. (*b*) Board and lodging up to 10s. per week. (*c*) Medical expenses up to £5.	not exceeding four weeks.

But these benefits are payable not only where disablement results from an accident, but also where it is caused by any one of the following diseases contracted by a servant whilst in the insured's employ and during the currency of the policy; viz. typhoid, typhus, or scarlet fever, small-pox, measles, or diphtheria.

It will be noted that the diseases need not be contracted as a necessary incident of the servant's work. The benefits will be payable wherever the servant may have contracted the disease, as long as the servant was then in the insured's service and the policy was current.

(3) **Compensation for Three Months.** (*a*) Payment of full wages during disability by accident only up to a period of three months.

(*b*) Payment of cost of board and lodging (limit 10s. per week) for a period of three months, but only whilst the disabled servant continues to live in the employer's house.

(*c*) Payment of a donation or subscription made to any hospital to which the servant may have been removed, but only to the extent to which the amount payable under clause (*b*) may not have been claimed.

(*d*) Payment of medical or surgical expenses up to £5.

(4) **First Week of Disablement.** Provides, in addition to the legal liability, payment of half-wages up to £1 per week for the first week of total incapacity caused by accident arising out of and in the course of employment.

This is to meet the provision of the Workmen's Compensation Act, 1906, which enacts that where disablement does not continue for two weeks, no compensation shall be payable in respect of the first week.

RATES OF PREMIUM.

Premium rates for workmen's compensation risks, so far as the leading offices are concerned, are regulated by the Accident Offices Association. Such rates are of course confidential, and any detailed exposition thereof would be out of place in a volume such as this. Some rates, however, from having been constantly advertised, have become more or less matters of common knowledge, and it should be understood that only such rates will be specifically referred to in this book.

The published rates for domestic servants' risks refer to

(*a*) Legal liability only;

(*b*) Extended benefits as in the first scheme described.

These rates, which are quoted by practically every office in the country are as follows—

	(*a*)		(*b*)	
	s.	*d.*	*s.*	*d.*
Indoor Servants	2	6	5	0
Gardeners	5	0	7	6
Coachmen and Grooms (not hunting)	7	6	10	0
Chauffeurs	20	0	30	0

Other and varying rates are charged for the further schemes of extended benefits depending upon the scope of the cover granted.

No additional charge is made for domestic servants to include the compensation payable under the Workmen's Compensation (War Addition) Acts, 1917 and 1919, and the rates shown cover the whole of the employer's legal liability, however arising.

It frequently happens that servants are engaged partly in one class of work and partly in another, as where a man is engaged as a gardener and also to drive a pony, or as a chauffeur gardener. The rate for such employee is the highest rate for the various categories in which he is engaged, so that a chauffeur gardener would be rated at 20s., and so on.

Chauffeurs. It should be carefully observed that the rate for chauffeurs applies only to such employees when in *private employ*. It does not apply to motor men engaged in connection with any business or under an estate staff.

Coachmen and Grooms. The rate of 7s. 6d. covers all the usual duties of this class of servant, but not the risk of hunting. Private grooms engaged as huntsmen, but not under an estate insurance, may be insured at 20s. per head.

OCCASIONAL SERVANTS.

The insurance of occasional servants at first sight presents certain difficulties. Occasional servants include charwomen, jobbing gardeners, window-cleaners, and the various people who are from time to time required in connection with a private residence, but whose terms of employment are so irregular that it would not be practicable for the employer to state in advance the number of such employees, nor easy for him to declare at renewal exactly how many had been engaged during the past year. Yet no employer could be expected to have to notify his insurance company every time he engaged a gardener for a day's work, and some way out of the difficulty had to be found. This was done by including the insurance of all occasional servants, without specification or classification, under an inclusive clause, at an additional premium based upon the premium paid for the regular servants. How this is done is best illustrated by giving the wording of the clause.

"**Occasional Servants Clause.** In consideration of an additional premium having been paid, this policy is extended to indemnify the employer in respect of his liability to employees occasionally employed by him for domestic labour in connection with his house or garden, and for the purposes of this insurance, the expression 'employees occasionally employed' shall not be deemed to include any person regularly employed for more than two days a week, whether for the whole or a part of a day, or persons employed continuously for more than two months."

The premium for this cover is an amount equal to 25 per cent of the total premium paid for the regular servants, with a minimum of 2s. 6d. The clause as given above covers only occasional labour in house or garden, and applies when the regular staff consists of indoor servants only, or of indoor servants and gardeners. If the regular staff comprises also a coachman or groom, the clause requires amendment by the addition of the words "or stable" after house or garden, whilst if a regular chauffeur is employed, the occasional clause may be made to include occasional chauffeurs by the addition of the words "or in connection with the motor car or motor cars owned by the employer." It is, however, in the insured's option to omit the insurance of occasional chauffeurs

from the clause, in which event the 25 per cent is charged only on the premium for the remainder of the permanent staff. An important point is that the clause covers only servants employed for *domestic* purposes; it would not cover occasional men engaged in repairs or decorations. No extended benefits are insured for occasional servants, and it accordingly follows that the premium of 25 per cent is based on the legal liability premium for the regular servants, even though those servants may be insured under the same policy for extended benefits.

It is also permissible to insure occasional servants under this clause without any permanent servants being employed, and the minimum premium of 2s. 6d. is then applicable.

Definition of "Occasional Servant." The provision of the occasional labour clause met the difficulties of employers, but it did not, when first drafted, define what is an occasional servant. It will be remembered that under Section 13 of the Act of 1906, liability is excluded towards persons temporarily or occasionally employed for other than the employer's trade or business, so that purely occasional employees in a private house would have no claim. The Act does not, however, define what constitutes occasional employment. In view, however, of this provision of the Act it might at first be thought that the occasional clause was unnecessary, but many instances may arise, which, though called occasional in common parlance, might be held to be regular within the meaning of the Act. A charwoman employed on the same day every week is a familiar example. The employer was therefore faced with an unknown liability, or at any rate with the prospect of having to contest doubtful claims. For this liability an insurance cover was needed. The insurance companies, however, for their own protection were bound to lay down rules to define what servants were within the operation of the occasional clause, and these rules are contained in the second part of the clause. Under these the company agrees to consider as occasional any servant employed for not more than two days a week, or not more than two months continuously. Thus, if a charwoman is engaged to come every Monday and Friday, for example, her employment is occasional, and the same would apply to a nurse employed for a period of, say, six weeks.

It is important to bear in mind that the definitions set up by the company under its policy do not in any way affect the position under the Act. The clause covers *legal liability* only, and if the employment is purely occasional, no liability would arise. The company, of course, has the right to deal with any claim by contesting or otherwise as it thinks fit and according to the circumstances of the case, but the point is that the insured is protected financially in any event.

ADDITIONAL SERVANTS.

Clause 2 of the policy form deals with the question of alterations in the staff of servants. This was devised to obviate the necessity of the employer having to advise the company every time a different or additional servant was engaged. The effect is that the policy covers—

(*a*) The successor of any original servant.

(*b*) Any additional servant engaged during the current period of insurance.

This provision applies, however, only to the same class of servants as those insured when the policy was taken out. Thus, if a policy is issued to cover two indoor servants and one gardener, any additional indoor servants or gardener would be covered. But if during the year the employer engages a coachman or chauffeur, these would have to be specially notified to the company.

The operation of this clause obviously requires that the whole staff should be insured. There is no kind of average in a policy of this class, and it would not be equitable if the employer insured only such servants as he chose.

The premium for any additional servants is adjusted at renewal, generally at a pro rata rate for the time such servant had been employed during the past year. It is the usual practice to issue at renewal a new policy to cover any increased staff, and not to continue to make annual adjustments as is done under wages policies. It might be noted here that a few offices require immediate notification of all additional servants, and issue a new policy then without waiting for renewal. The majority of offices, however, adopt the contrary procedure.

Before concluding this chapter reference may be made to other

classes of domestic servants, not employed in private residences, but who are insured on a *per capita* basis, and to the special insurance granted under the Householder's Comprehensive Policy.

PUBLIC HOUSES.

Domestic servants employed in public houses, in addition to household duties, have frequently to do work in the bar. They may be covered for any or all of these duties at a premium of 10s. per head, which would apply even though the servant were not engaged in the bar. Occasional servants in a public house may be covered at 25 per cent of the premium for the regular servants, but the minimum premium is 10s.

BUSINESS PREMISES.

In ordinary shop risks where only one domestic servant and no other employee is engaged, the servant may be insured for a premium of 5s.

Although such a domestic servant may be engaged wholly or mainly in household duties, there is undoubtedly an increased risk consequent upon the use of the premises for trade purposes.

Domestic servants employed in any other way than as mentioned, including those employed in mansions or country houses having an estate staff, are insured on a wage basis and more properly belong to the section of the business dealing with trade and business risks.

HOUSEHOLDER'S COMPREHENSIVE POLICY.

This is a special form of policy issued to meet the needs of private residents, and covers a variety of risks incidental to the occupation of a private house. Amongst such risks is comprised the liability of the householder to compensate his domestic servants for injury by accident arising out of and in course of their employment.

The distinguishing feature of this form of policy is that no schedule of servants has to be supplied by the insured, and no separate premium is charged for this portion of the risk. The rate of premium for the Householders' Comprehensive Policy is 5s. per cent, based upon the total value of the contents of the premises, and the premium thus arrived at covers all the various risks. The

company may for its own convenience allocate a portion of such premium to cover the workmen's compensation risk, but so far as the insured is concerned the premium is a comprehensive one.

The policy, therefore, covers the whole of a householder's domestic staff of whatever category, including gardeners, coachmen, or grooms, and both regular and occasional servants, except that it does not cover chauffeurs, either regular or occasional, unless an additional premium is paid and the policy appropriately endorsed.

The policy covers not only the insured's full legal liability, as already defined, but also extended benefits for regular servants in accordance with the first scheme described on a previous page, i.e. full earnings for the first four weeks of disablement and medical expenses up to £5. It will be seen that the scope of this policy, considering the rate of premium charged, represents a distinct advance on the individual domestic servants' insurance.

CHAPTER VI

Trade Risks

The great bulk of workmen's compensation business consists of trade risks. The methods of insuring these are more complicated and call for more discrimination than is necessary for domestic servants' risks.

Domestic servants form a more or less distinct class; they do much the same kind of work and in similar surroundings. Rates of premium for such employees can therefore be stereotyped with a fair degree of justice. With trade risks it is far otherwise. Conditions of employment and the perils incidental thereto vary enormously as between different classes of trade, and variations arise even amongst members of the same class according to the methods adopted for carrying on the business. It may be said without fear of contradiction that the incidence of the different hazards, the methods of rating, and the general ramifications of workmen's compensation business, are sufficient to provide study for a lifetime. In this chapter an attempt is made to set out in elementary form the underlying principles of the business and the present-day methods of conducting it.

These may, perhaps, best be illustrated by an examination of the general considerations which have to be taken into account by the company which has before it a completed proposal form for a workman's compensation risk. By this is meant those general considerations which apply to all trade proposals, apart from the special points which arise in connection with particular trades.

It has already been said—and this point cannot be too strongly emphasized—that the proposal form is the basis of the contract. No trade risk can be properly apprehended, nor ought it ever to be accepted, without a completed proposal form signed by the proposer himself or by his duly authorized representative. When a company has such a proposal before it, the points arising may be divided broadly into two main classes—

(*a*) Those which relate to the eligibility of the risk for acceptance.

(*b*) Those which govern the rating of the risk.

ELIGIBILITY OF RISK.

The question of whether a risk is eligible for acceptance depends upon two factors—

(1) Physical hazard.
(2) Moral hazard.

PHYSICAL HAZARD.

In the class of business under discussion the physical hazard is by far the more important of the two, when it is borne in mind that any claim which may arise is for compensation to be paid to a workman and not to the insured himself, it is easy to see that the moral hazard of the proposer, though it cannot safely be neglected altogether, does not assume the same importance as in most other classes of business.

The Trade. In estimating the physical hazard, the first point on the proposal form is the nature of the trade. Most offices have a more or less stable list of trades they prefer not to accept. Proposals may be received running through the whole category of trades from a simple office risk to the extremely hazardous trades of master stevedores or window-cleaning companies.

Trade risks taken as a whole are now on a fairly profitable basis, but this has not always been so, and the business has on occasions passed through its bad periods. During the first few years following the passing of the Act of 1906, what with new conditions and lack of experience in rating, many offices were transacting the business on a very small margin of profit if not at an actual loss, and an all-round revision of rates became necessary to put the business on a paying footing. It is, therefore, natural that many companies are unprepared to accept every class of risk however hazardous. Some restrict their acceptances to light, non-hazardous trades, while others may accept almost anything that is offered to them. It may be said that the tendency of offices generally is to broaden the basis of their underwriting, and it should not be overlooked that any new legislation is likely to make insurance compulsory and to carry with it some sort of undertaking by the offices not to decline risks on account of the hazard of the class.

Machinery. The next point refers to the machinery used in the works, and whether

(*a*) it is mechanically driven;

(*b*) it is properly guarded.

Mechanically-propelled machinery, i.e. involving the use of steam, gas, water, electricity, or other mechanical power, is one of the most fruitful sources of hazard. Machinery driven by hand presents considerably less risk. Where mechanically-propelled machinery is present, then it becomes important to know how it is fenced and guarded so as to minimize the risk. This information is derived from question 3 on the proposal form. For very large risks with a considerable amount of machinery in use, a survey of the premises is desirable. This will be referred to later under the methods of rating.

Connected with the use of machinery are also the condition of boilers and the extent to which acids, gases, chemicals, or explosives, are used. These questions on the proposal (Nos. 5 and 6) call for careful scrutiny as having a bearing on the physical hazard.

Claims Experience. This is the last but by no means the least of the considerations arising in connection with the physical hazard, and is one of the points most keenly watched by the experienced official. Particulars are required for a period of three years prior to the date of the proposal, if the business has been so long in existence, of all claims which arose, showing separately those which ended fatally, those which caused permanent disablement, and those causing only temporary disablement. The number of claims arising in each year must be given, and the total amount paid as compensation in respect thereof. Any outstanding claims should be included with an estimate of their probable cost.

The fact that a number of claims have occurred is not of necessity a bar to the acceptance of the risk. In most manufacturing or industrial risks claims of some kind are almost inevitable. The important point to note is whether the claims, by reason either of their number or of their magnitude, are more than should reasonably have been incurred for the class of trade. This point requires considerable experience properly to determine. The number of claims is a very important point. The occurrence of a large number of accidents may be evidence of something unsatisfactory in the

risk. If the accidents are of a serious nature it points to an undesirable element of risk in the trade process, whilst if a large number of minor accidents is reported, it shows either bad management or carelessness on the part of employees. Such points as these have an important bearing on the eligibility of the risk.

MORAL HAZARD.

For evidence of the moral hazard, reference must be made to questions 7 and 8 on the proposal form dealing with the previous history of the proposer. These questions are designed to ascertain—

(*a*) If the proposer is at present or has previously been insured against his liability to employees.

(*b*) If so, with what office.

(*c*) Whether any such proposal or renewal has ever been declined or withdrawn.

The answers to these questions are material facts and must be fully disclosed to the company. The proposer is bound to state all the companies with which he may have been insured, and whether in respect of the same or any other employees. Where any proposal or renewal had been declined, the company would make enquiries from the office declining. No difficulty arises in this connection; the usual courtesy between offices makes it possible to obtain all the required details. Declinature *per se* is not necessarily evidence of poor moral hazard, but it always calls for investigation.

Methods of Rating. Being satisfied as to the eligibility or otherwise of the risk, the company has next to scan the proposal to see that the necessary information is given to enable the risk to be properly rated. Amongst the leading companies rates are regulated according to the rules of the Accident Offices Association. These rules are comprehensive in character, and there are only a few classes of trades which fall outside them. It will be readily understood, however, that trades, professions, and businesses resolve themselves into a large number of different classifications and sub-divisions, amongst which the rates have been by experience scientifically adjusted.

The Trade. The most important factor, then, is the nature of the trade, taken in conjunction with the particulars of work done.

A mere description of the trade would not always be sufficient. A man might describe himself as an engineer, but without exact details of the class of work done, it would not be possible properly to rate the risk. The rates naturally depend on the work done and the weight of the heaviest individual piece produced, and the machinery used in the process. Again, it must be stated in many trades whether work is done entirely in the factory or workshop, or whether there is outside work such as carting, erecting, or repair of machines. Further information on these points may be obtained from the schedule of employees.

Machinery. The use of machinery has an important bearing on the rating. Trades using mechanically-driven machinery require a higher rating than those in which the machinery (if any) is hand-driven only. Thus, to take an example, builders' risks in which power-driven machinery is used on the job are rated higher than if such is not the case. The purpose for which the machinery is used is another point to be taken into account. The greatest hazard is connected with wood-working machinery, i.e. power-driven machinery of any kind for working in wood. Employees engaged in the use of such machinery must be rated higher than other machine hands, and the proposal form must be closely watched to see if any circular saws or other wood-working machines are used. Whenever it appears that the proposer has a considerable amount of machinery, or the works are large and the trade processes complicated, it is desirable that a survey should be made, and it is convenient to indicate here the general form of such a survey.

Survey. Printed forms of survey are not used for workmen's compensation risks, as conditions are so varying, and one risk differs very greatly from another. However, it is possible to give in summarized form the chief points which a surveyor would look for in inspecting a typical factory risk. These points may be divided into four groups.

(1) Arrangements in the Factory. (*a*) *Ventilation.* The atmosphere of the factory is of considerable importance. It should be cool, dry and moving rather than hot, damp and motionless. There should not be extremes of temperature either in summer or in winter. High temperatures induce slackness and low temperatures hinder the employees' skill at their work. A system

of exhaust ventilation is of great value in many industries, especially when dusty processes are involved.

(*b*) *Heating.*

(*c*) *Cleanliness.*

(*d*) *Cubic Capacity.*

These are all of importance as giving the employees the right conditions in which to work. Regulations as to cubic capacity according to the number of workers are laid down by the Factory Act, but attention should be given as to how the spacing of the employees is arranged.

(*e*) *Lighting.* There should be uniformity of lighting over the whole factory, adequate for the purpose of the work. Dark corners are undesirable, as also is glare in the eyes of the workpeople.

(*f*) *Machinery.* Exact and precise details of every different machine should be given and the purpose for which it is used. The proper guarding of machinery is a matter for the factory inspector, but the surveyor will, of course, satisfy himself that the protections are sufficient for the purpose. The experienced workman's compensation surveyor needs to understand something of engineering. The position of the various machines is important, and whether they are so arranged as to be easy of access on all sides.

The surveyor's mind, when considering the arrangements in the factory, is directed to those features which are likely to give rise to accidents, and the risk approaches to a first-class one as these features are eliminated.

(2) WELFARE OF EMPLOYEES. (*a*) *Prevention of Fatigue.* Fatigue plays an important part in causing avoidable accidents, and everything which prevents fatigue of the workers is to be encouraged. Inquiries will therefore be made to ascertain—

The number of working hours per day.

The length of each shift and arrangements for intervals.

The hours of commencement and whether before breakfast or not.

Length of holidays allowed.

Whether the work is standing work and what seating accommodation (if any) is provided.

The heaviest weight handled, and to what extent overhead runs or hoists are used.

(*b*) *Mess-rooms and Canteen.* A description of the system in

use is necessary, with details of arrangement for drinking water or other refreshment during spells of work.

(*c*) *Protective Clothing.* This is necessary in certain trades, notably in dusty, dirty or wet processes, or where acids or corrosive liquids are used, or where the employees are exposed to dangerous machinery or to excessive heat or the rigours of the weather. Goggles must sometimes be provided to guard against flying particles. Young girls who attend machinery should always wear their hair put up, and all women should wear head coverings. Very serious accidents have occurred through women getting loose hair caught in machinery.

(*d*) *Cloak-room and Lavatory Accommodation.*

(*e*) *Welfare Organization.*

Details of these should be ascertained in order to see whether the employees are contented and well looked after. Points such as these count when weighing up the chances of accident.

(3) Prevention of Accidents. The points already referred to would operate to some extent to prevent accidents, but special inquiries would need to be made as to any specific safeguards adopted to prevent accidents. These will naturally vary according to the circumstances of each case, but the following points are typical of those to be inquired into—

(*a*) Are there any notices posted in the works issued by the Safety First Association, or other notices, especially those referring to the cleaning of machinery whilst in motion ?

(*b*) Is there a safety committee, and if so is it a success, and are the employers interested in it ?

(*c*) Is there a safety inspector in the works, and does he devote his whole time thereto ?

(*d*) Are investigations made into all accidents and recommendations made to prevent future accidents of the same kind ?

(*e*) Are there any particular safety devices in use, and have they effected a reduction in the number of accidents ?

(*f*) What additional safeguards, if any, does the surveyor recommend ?

(4) Procedure After Accidents. The procedure adopted after an accident has happened may do much to minimize the seriousness of the disability.

(*a*) *First Aid.* Full details of all first aid appliances should be given, showing where such appliances are kept, what they consist of, whether they are constantly inspected and kept in working order, and who is responsible for administering them in case of need.

(*b*) *Ambulances.* What ambulances are kept, who is in charge of them, and what arrangements generally are made for the removal of an injured employee ?

(*c*) *Hospital.* How far away is the nearest hospital where immediate treatment can be obtained in case of need ?

Many of the points indicated in this report would not of course, apply to every risk, but if information is obtained on the lines set out a very good idea will be gained of the exact nature of the risk, its eligibility, and its proper method of rating.

Pursuing further a consideration of the proposal form, the next and most important item is the schedule of employees, and a full examination of this is necessary to illustrate the method adopted.

SCHEDULE OF EMPLOYEES.

The schedule of employees sets out in detail the particulars of the staff to be insured. The whole of the employees engaged by the proposer in that particular business must be included, provided they come within the scope of the Act. That is to say, all employees must be included except those not engaged in manual labour whose annual earnings exceed £250. From the company's point of view it is essential that the whole staff be included, because the employees are not insured individually ; the insurance is based on the total wage-roll, and it would obviously operate against the company if, say, only half the staff were insured and no means were available to ascertain which half. The employees must be stated as they exist at the time the proposal is made, with due allowance for any expected additions. It will be seen that the employees are classified in a certain way, and columns are ruled in the schedule to show the annual earnings. The following are the usual classes of employees—

Clerical staff.

Commercial travellers.

Wood-working machinists and their labourers.

All other employees.

This division of employees is required in order to arrive at the

main basis of rating. A fixed rate is applicable in all trades to each of the first three classes—clerical staff, commercial travellers, and wood-working machinists. The earnings of these classes of employees must always, therefore, be given separately in order that the fixed rates may be applied. All other employees may then be included in one single entry to which the specific trade rate will be applicable. This may be taken as the general rule, although in some special trades a further sub-division of this item may be necessary.

The estimated number of each class of employee must be stated, and the total amount of the estimated earnings of each. The proposer is bound to estimate these figures fairly, according to past experience and to his knowledge of his probable requirements during the ensuing year.

Annual earnings are made up of two parts—

(*a*) Cash ;

(*b*) Board, lodging, or other allowances.

In making a claim on his employer under the Act, an employee is entitled to base his compensation not only on the amount of his cash wages, but also on the value of any allowances he may receive. Board and/or lodging are the chief of these, but there are others. A farm hand may receive vegetables and milk, or a miner free coal, and so on. The value of all these would be taken into account in case of a claim, and they must also be allowed for when calculating the premium on the policy.

For convenience, maximum sums have been laid down by the companies as the value of board and lodging. Where an employee is entirely fed and housed the value is taken at £25 per annum. This figure was fixed many years ago, and it is, of course, obvious that it is nothing like adequate under present conditions. This amount is, however, still in general use, though there is nothing to prevent an employer agreeing a higher figure with the company at the time of taking out a policy. Board only, with no lodging, is assessed at £12 10s. per annum, and lodging only, when provided in the employer's own premises, is valued at a like figure. Where cottages are provided for the employees or any other allowances or perquisites, these must be taken at their annual value whatever that may be.

APPRENTICES AND ARTICLED PUPILS.

Apprentices, learners, shopkeepers' errand boys, and articled pupils are in a special position. Their earnings are very small, or in some cases nothing at all, and if included in the total wage-roll the company would receive little or no premium. There is, however, a distinct liability. These employees, being mostly under age, could claim the full value of their weekly services up to 10s. per week, and, moreover, in the event of serious and permanent disablement they would have the right to apply to the Court under paragraph 16 of the first schedule to the 1906 Act to have their compensation brought up to a figure based upon the amount they would probably have been earning had they not met with an accident. To meet this difficulty, certain minimum sums are laid down as the estimated earnings of such employees for the purpose of computing the premium. These are £40 per annum for shop-keepers' apprentices, learners, or errand boys, and £60 per annum for articled pupils and other apprentices.

GRATUITIES.

Where employees receive tips or gratuities as the recognized custom of the trade these form part of their earnings, and must be included in the schedule. Thus, hairdressers' assistants, waiters, and the like, must be assessed for premium on the amount of their cash wages plus an estimated allowance for tips, which in cases of difficulty may be fixed at an artificial figure by the company.

SUB-CONTRACTORS' EMPLOYEES.

Under Section 4 of the Workmen's Compensation Act, 1906, where an employer sub-lets part of his work to a sub-contractor, he is, in certain events, liable to the workmen of the sub-contractor for accidents or disease incurred in the course of their work. This liability may be covered under the policy, and if this is to be done an additional item must be filled in as stated at the foot of the schedule in the proposal form, giving the nature of the work sub-let and the estimated amount of the sub-contract. The amount of the sub-contract is given as being the figure which the proposer can easily calculate. The wages of the sub-contractor's employees may not be known to the head contractor. The premium is based

at the appropriate rate according to the nature of the work sub-let on one-half the amount of the sub-contract, as it is assumed that that amount will consist approximately as to one-half of wages and one-half of materials and profit.

COMPENSATION FOR FIRST WEEK OF DISABLEMENT.

One other point requires consideration in the schedule. We have seen that the Act of 1906 provides that unless disablement lasts for two weeks no compensation is payable in respect of the first week. Many employers desire to be able to recover compensation for their workmen in respect of this first week, and this may be done by a payment of an additional premium of 7½ per cent on the total premium payable for the legal indemnity.

WAR ADDITION ACTS.

Under present conditions a further calculation of premium is required to cover the extra liability imposed by the Workmen's Compensation (War Addition) Acts, 1917 and 1919. The total premium as shown in the schedule is increased by 21 per cent to cover these two Acts, and at the time of writing the aggregate premium thus disclosed is reduced by a discount of 10 per cent. This somewhat complicated method of arriving at the premium is probably of a temporary nature only. If and when a revision of the law of workmen's compensation is made by the legislature the whole position would have to be considered afresh, and in any event it is likely that some less involved arrangement will be made as the business progresses and stabilizes itself under post-war conditions.

MINIMUM PREMIUMS.

Where an employer has a small staff his wage-roll may be so low as to give only a trifling premium, not sufficient to meet the risk involved and the expenses of issuing and renewing the policy. It is therefore necessary that the premium should not fall below a certain minimum, which is usually the rate per cent. That is to say, although the estimated wages may be under £100, the premium will be the same as if they had amounted to £100. Where the rate of premium is less than 10s. the minimum premium is nevertheless

10s., except for clerical staff and shop assistants, and a few sundry risks usually of a small nature.

ADJUSTMENT OF PREMIUM.

When the proposal form is completed and the correct premium calculated, the policy will be issued in accordance therewith. It is obvious, however, that this does not complete the matter. The wages upon which the premium is based are purely estimates, but the insured requires cover for his whole staff, including any additions made during the year, or increases in wages to those already employed. This is provided for by an adjustment of premium made at the end of each period of insurance, according to how the wages actually expended compare with the amount estimated. The original estimate remains so long as the identical policy remains in force, and each yearly adjustment is made against this original estimate. It will be observed that the declaration signed by the proposer in his proposal form specifically provides for this adjustment, and the point is further dealt with by what is perhaps the most important condition of the policy, viz.: Condition 5 (*see* Chapter IV, Policy Forms, where the wording of the condition is set out in full). The practice of workmen's compensation general business is intimately bound up with this condition, and it is desirable to examine it carefully.

The first and all renewal premiums are to be regulated by the amount of wages and other earnings paid to the employees during each period of insurance.

The name of each employee and the amount of his earnings are to be recorded in a proper wages book, open to the company's inspection.

This is important. No details of individual employees are given in the policy, but a check is necessary to prevent an employer having, say, ten employees and only insuring for five, relying on the improbability of their all being injured at the same time.

A correct return of the earnings shown in the wages book as paid during any period of insurance is to be made to the company within one month of its expiry. If this amount is in excess of the original estimate, a further amount of premium—called an excess premium is payable; if it is less than the original estimate, the

company must allow a refund, called in insurance parlance a rebate. The due performance of this condition so far as it relates to acts to be done by the insured is a *condition precedent* to any liability of the company. This means that the condition must have been observed before a claim arises. If an employee is injured, the employer may be called upon to produce his wages book, and unless the name of the employee had previously been entered, the insured would forfeit his right to indemnity under the policy, and similarly if he had failed to make a correct return of wages at any previous renewal. The leading case on this point is *Bradley* v. *Essex & Suffolk Accident Indemnity Society* (1912). To facilitate the smooth working of this condition the company issues a form of adjustment certificate with every renewal notice, on which the insured may give the particulars in the required manner.

It may be noted that where the insured desires to cancel a policy before its natural expiry, returns of premium are not allowed at the scale of short period rates usual in other classes of insurance business. A return must be made of the wages paid from the commencement of the period of insurance up to the date of cancellation, and the necessary adjustment is made on those figures. In making any adjustment it must be borne in mind that no rebate will be allowed which reduces the amount of the premium below any minimum premium which may be applicable.

There is no cancellation clause in this form of policy giving the company a right to cancel the insurance, so that a policy can only be terminated before expiry by the mutual consent of the parties.

CHAPTER VII

Trade Risks (*Continued*)

In this chapter some attention is devoted to the incidence of the workmen's compensation hazard as applied to various trades. The trade is the basis of rating and will be applicable to every member of any particular trade. It cannot, of course, be said that every business is conducted on the same lines even though in the same class of trade. Some will be better managed than others; some will adopt every possible safety device; whilst others may be careless in their methods. Rates, however, are based on the combined experience of each trade, so that an average is struck sufficient to make each trade remunerative from the insurance point of view. No system is at present in force for giving discounts to individual traders adopting accident-preventing devices, as is done in the fire insurance world for the use of approved fire-extinguishing appliances. It would not be possible within the limits of this book to devote consideration to every trade, although each has its own particular features, but some notes on the more familiar trades are given and some reference to the particular hazard involved in each.

CLERICAL STAFF.

This is undoubtedly the least hazardous of all trade risks. Clerks, as a rule, are drawn from the ranks of the middle classes. Their lives are orderly and regular. They enjoy on the whole good health. Their work is non-hazardous. The risk of meeting with an accident is small, and the chance of recovery from injury is high. They are properly rated at the lowest rate and, moreover, even when employed in connection with some distinct trade, however hazardous, they are rated at their own rate and not at the trade rate.

There are, however, some classes of clerical staff who are in a higher rated class, owing to the peculiar nature of their work.

Architect's Clerks. Much of the time of these is spent out of their office, inspecting building operations or otherwise in connection with more hazardous work than ordinary office work.

Auctioneer's Clerks. The business of an auctioneer takes him and his clerks into many different places, and involves a considerable amount of surveying and inventory making. Much travelling has frequently to be undertaken. Extra rates are charged to cover clerks engaged in this work.

Clerk of Works. A clerk of works, although his actual duties may be clerical only, is obviously in a much more hazardous position. He is engaged generally in connection with the erection or reconstruction of buildings, which exposes him to all the hazards of the general building employees. As such he is rated according to the building trade rate.

Shipping Clerks. Provision has to be made for the fact that shipping clerks are engaged to do work at the docks, or on wharves and quays and on board ships. The extra hazard in this kind of work is reflected in an increase in rate, though, of course, no increase will be required for shipbroker's clerks who are engaged in office work only.

Where members of the same staff may be engaged in work of different classification, it is necessary for the policy to be endorsed to exclude the more hazardous work unless the appropriate extra rate is paid.

Thus, a policy issued to a shipbroker whose clerks did not work at docks, etc., would be endorsed excluding that risk, but if, for example, one clerk out of a staff of five was engaged in that work, the one would be rated at the higher rate and the remaining four at the normal rate, the policy being free from endorsement. The insured would be covered however many clerks might subsequently do dock work, because at renewal of the policy his wages book would show what amount had been expended in wages for such work, and the premium would be adjusted accordingly.

SHOP RISKS.

The next great classification of risk is that of retail shopkeepers.

Shop risks are divided into various classifications according to the degree of hazard.

The lightest class are those in which only small light goods are handled, involving no great risk of accident to employees. This class may be said to be almost as free from accident as clerical

staff. Amongst this category of shop risks may be enumerated bakers, booksellers, boot shops, chemists, clothiers, drapers, dress-makers, hatters, hosiers, jewellers, milliners, newsagents, photographers, tobacconists, and watch-makers.

The second class of shop risks comprises those trades where goods of medium bulk are handled, or where by the nature of the trade the premises cannot be kept so clean or free from risk of accident. This class includes fruiterers, greengrocers, grocers, and provision dealers with no licence, ironmongers, Italian warehousemen, and umbrella shops.

The third and next hazardous classification deals with trades in which heavy and bulky packages are handled, or shops in which knives or other cutting implements are used. Such shops are corn chandlers, furniture dealers, grocers with machinery, hairdressers, pawnbrokers, and picture-frame dealers.

A fourth class comprises the most hazardous section, such as butchers, fishmongers, furniture removers, grocers with a full licence, poulterers, and publicans. In all of these the nature of the trade and the duties of the employees tend to increase the risk of accident.

In all shop risks the trade rate is to be applied only to employees engaged in retail shop duties. Such would, in the usual way, include errand boys delivering by hand or hand-cart, though this is not so in a few cases such as dairies, newsagents, furniture dealers, and the like, where hand delivery calls for a somewhat higher rate.

DELIVERY.

Hands engaged in the delivery of goods, either by cycles or cycle carriers or by horse or motor vehicles, and hands engaged in stables or motor houses, are rated differently from the ordinary shop assistants.

The risk is naturally very considerably greater, and it does not vary according to the classification of the trade, being more or less constant for all except that a higher rate is required for delivery in some special cases where the risk warrants it, as in furniture removers, corn merchants, musical instrument dealers, and the various trades included in the most hazardous category.

WAREHOUSE RISKS.

Akin to shop risks are warehouse risks, which might be described as wholesale shops. These are risks in which goods are stored and kept for sale, but in which no manufacture is carried on. Taken as a whole, they are rated on a slightly higher scale than the corresponding retail trade, owing to the larger turnover and the greater bulk of goods disposed of at one time. Also warehouses are built on a larger scale than shops; there are more storeys, and lifts, hoists, pulleys or cellar flaps, are more frequently in use. For the same reasons the rates for delivery are also higher.

WHARF AND RIVERSIDE RISKS.

Another distinction is required in warehouse risks, arising from the fact that many warehouses are situate on a river-side and receive a great many of their commodities by water. This adds very largely to the risk, and a very much higher rate is required for those employees of the warehouseman who are engaged in dock, or on a wharf or quay in taking goods off vessels, or in delivering them on to vessels.

FARMERS.

The business of agriculture, though not occupying the pre-eminent position that it once held, may still be regarded as one of the staple industries of the country, and as such it requires special consideration for workmen's compensation insurance. Many offices issue special proposal forms for the use of farmers, designed to ascertain the special information appertaining to the risk. The chief points arising are as follows—

Age and Physical Condition of Employees. Farm labourers are proverbially a long lived race, and many men continue at work up to a very ripe age. Again, work is frequently found on a farm for men suffering from some physical defects, either in limb or sight or hearing. A question on the proposal form asks for information on these points. Aged employees, if they meet with an accident, are slow to recover, and what might cause a trivial disability in a younger man might very well assume serious proportions in an old man. For this reason many offices charge an additional

premium for physically defective or aged employees, though the practice is not universal. In no case, however, is extra premium charged for workmen who are physically disabled by reason of their service in the army or navy.

Machinery. The principal use of mechanically-driven machinery on farms is in connection with threshing machines. Very frequently the work is undertaken by independent contractors, who travel with their machines from farm to farm and employ their own workmen. For such workmen the farmer would not be liable as principal, a special exception being made under Section 4 (Sub-contractors) of the Act of 1906. He would, however, be liable for any of his own men assisting with the work of threshing, and this is covered at the ordinary trade rate as one of the usual processes incidental to farm work. Where, however, the farmer has a threshing machine of his own, and hires it out together with his own employees on work away from his farm, this constitutes a special risk not contemplated under the trade rate, and a higher premium is charged accordingly.

Carting. General carting is another of the various activities of a farmer. If the carting is undertaken merely for the ordinary purposes of a farm, hands so engaged will be covered at the rate for the trade, but if carting is done for other people, or for other than the insured's own farm purposes, a higher rate is required. The necessary information on these different points is brought out by questions on the proposal form.

Board, Lodging, etc. Many farm employees receive additional benefits beyond the amount of their wages. Full board and lodging is assessed for rating purposes as of the value of £25 per annum in England and Wales, but in Scotland and Ireland it may be taken at £18 5s. per annum, owing to the somewhat lower standard of living for agricultural labourers in those two countries. Similarly, board, or partial board, is assessed at half the respective figures for board and lodging, i.e. £12 10s. in England and Wales, and £9 2s. 6d. in Scotland and Ireland. Where cottages, vegetables, milk, use of garden, and other perquisites are allowed, the annual value thereof must be stated according to the circumstances of each case.

Extended Benefits. Contrary to the usual practice in trade

risks, certain extended benefits may be covered under farmer's policies. This is, no doubt, in consequence of the greater degree of intimacy existing between a farmer and his servants, and his desire to do something more for them than is required by his strict legal liability. Policies may therefore be granted to secure payment of full wages for a period not exceeding twenty-six weeks, and legal liability thereafter. A limit may be imposed on the amount of the full wages or not, according to the rate of premium charged.

Members of Employer's Family. It very frequently happens that a farmer employs members of his family who reside with him. It will be remembered that a member of the employer's family dwelling in his home is, by Section 13 of the Act, declared not to be a workman within the meaning of the Act. It sometimes happens that an employer asks for insurance for such class of employee, and this is a convenient point to examine how this may be done, although the following remarks apply equally to all trades and not to farmers' risks only.

Policies may be issued to include any member of the insured's family dwelling in his house, but to secure compensation on the following scale only, and then only in respect of accidents arising out of and in course of the employment by the insured.

(*a*) In the event of fatal accident—

(1) If the workman leaves total dependants, a sum equivalent to one year's wages not exceeding £100.

(2) If the workman leaves no total dependants, a sum not exceeding £10 to cover medical and funeral expenses.

(*b*) In the event of non-fatal accident causing total disablement for work—

Half the workman's average weekly earnings, with a maximum of 20s. a week, together with the increases provided under the War Addition Acts. Such compensation is payable during total disablement up to but not exceeding twenty-six weeks from the date of the accident.

The names and relationship of the members of the family must be stated in the policy. Premium is charged on the amount of such employees earnings at the ordinary trade rate. In effect this is an extended benefit scheme, as it covers something beyond

the insured's legal liability, and the sums so insured are payable as a benefit and not as an indemnity to the insured against his liability.

ESTATE RISKS.

Employees on a private estate are in a somewhat similar position to farm hands, except that their duties are of more variety. An estate owner will generally have a big mansion, requiring a large staff of indoor servants. His gardens, grounds, and woods have to be kept up, and he will indulge in fishing, hunting, horse-racing, dog breeding. and the various other occupations of a landed proprietor. A special classification is therefore required of his employees, and a special form of proposal is used to obtain the necessary information.

The following are the classes of employees usually covered under this form of policy, a different rate being charged under each heading.

(*a*) Beaters and loaders; all employees engaged in connection with hunting; fishermen.

(*b*) Maintenance staff, including bricklayers, masons, carpenters, painters, decorators, blacksmiths, farriers, and other mechanics and their labourers not using wood-working machinery; employees attending to gas or electric light plant.

(*c*) Steam-threshing tackle attendants, and steam-roller or traction engine men; employees in breeding, training and racing establishments, including jockeys.

(*d*) Woodmen and foresters, and hands engaged in tree-felling, sawing and carting; wood-working machinists and their labourers; hands engaged in well-sinking.

(*e*) All other employees, including indoor and outdoor domestic servants, chauffeurs, and any other employees not included in the preceding classifications.

Any construction or demolition of buildings or work in mines, quarries, or collieries, including sub-contracting, is rated at the appropriate rate for the trade.

The various classes of employees enumerated are rated at a rate per cent upon their total annual earnings. It will be noted that this is an exception to the general rule that domestic servants are rated on a *per capita* basis.

WOOD-WORKING MACHINISTS.

Where estate employees are engaged partly in using wood-working machinery and partly in other work, the rate for wood-working may be applied only to the amount of wages they receive for the wood-working. This is a concession to estate owners, as in the usual way under trade risks hands engaged in using wood-working machinery must be charged at the wood-working rate on the whole of their earnings, even though part of their time is spent on less hazardous work.

AGED EMPLOYEES.

Particulars of employees over sixty years of age are required on the proposal, and extra rates are sometimes charged for such employees, and for physically defective men other than ex-service men.

EXTENDED BENEFITS.

Policies may be issued to cover extended benefits by giving full wages up to twenty-six weeks, as is done for farmers' risks.

MANUFACTURING RISKS.

Risks involving the manufacture of some commodity, form the greater portion of workmen's compensation business. They are many and various in kind, and the degree of hazard differs according to the nature of the work done. A classification of factory risks can only be made according to the trade, as each trade is rated on its merits. The nature of the machinery used, the weight of unit handled, and the general conditions of the particular industry with the past experience of accidents are all factors to be taken into account in fixing a rate. A general division of manufacturing risks may be made into light, medium, and hazardous classes.

Light Risks. The first class include such risks as boot and shoe manufacturers, brush makers, clock makers, clothing manufacturers, manufacturing jewellers, hat makers, lace manufacturers, sack makers, shirt makers, silk spinners, toy makers, and woollen spinners and weavers.

Medium Risks. Among risks of medium hazard may be enumerated basket makers, bedstead manufacturers, box makers,

cabinet makers, carpet manufacturers, electrical and other engineers, glass manufacturers, rubber goods makers, lamp makers, leather goods manufacturers, metal workers, motor car makers, paper manufacturers, rope manufacturers, saddle and harness makers, and umbrella manufacturers.

Hazardous Risks. Considerable diversity exists among risks of the more hazardous class which comprises such industries as brewers, brass founders, brick makers, chemical works, confectioners using machinery, gas manufacturers, ice makers, iron and steel manufacturers, paint makers, potteries, salt works, saw mills, ship builders, soap makers, tin works, and wire mills.

These lists are not in any sense exhaustive, nor may it be assumed that every risk mentioned in a class is of the same degree of hazard. Many trades which are of a light nature, if no machinery is used, will be considered as a heavier risk if machinery is used. In every case hands using wood-working machinery are rated at a higher rate than that applicable to the trade. Perhaps the most important of manufacturing risks are those comprised under the general heading of engineers. These are sub-divided according to the class of work done, and the rate is calculated to include all the work ordinarily carried out by an engineer's employees, including making, fitting up, and repairing. In some cases an extra rate may be required for work done away from the factory, where the work of fitting up or repairing involves additional hazard, as, for example, in the case of bridge builders, but in the usual way an all-round rate is charged to include all work incidental to an engineer's business. A special classification is made for engineers doing general work and not engaged in the manufacture of any special kind of machinery.

BUILDERS.

Builders' risks are of some importance for workmen's compensation. Their insurance was required under the Workmen's Compensation Act, 1897, but only in respect of buildings not exceeding 30 feet in height, or where mechanically-driven machinery was used on the job.

The rates for builders' risks are subject to certain particulars. Formerly different rates were applied if the building exceeded

40 feet in height, but this distinction is no longer adopted. The following divisions of the employees is required in order to rate a builder's risk—

(*a*) Hands engaged in shop or yard.

(*b*) Hands engaged on jobs where no mechanically-driven machinery is used.

(*c*) Hands engaged on jobs where mechanically-driven machinery is used.

(*d*) Woodworking machinists.

Mechanically-driven machinery, in reference to builders' risks, does not include mortar mills, stone crushers, or concrete mixers, even though worked by mechanical power.

The ordinary builder's policy covering the classes of employees enumerated above contains certain excepted risks, viz.—

(1) Demolition of buildings, except such as do not exceed 30 feet in height.

(2) The construction or repair of towers, steeples, blast furnaces, chimney shafts, viaducts, bridges, docks, railways, canals, or tunnels.

(3) Sinking of wells exceeding 20 feet in depth.

(4) Blasting, quarrying, or sand or gravel digging.

These excepted risks may, however, be covered by payment of a higher rate of premium.

DISEASES.

In certain trades, by reason of the nature of the processes, or the kind of material handled, employees are liable to contract one of the diseases scheduled in the Act. In such cases, if the policy is to include payment of compensation for disablement caused by disease, a higher rate of premium is sometimes required, though not always, as the trade rate may include the disease risk. The commonest examples of such trades are wool combers and wool sorters, where the risk of anthrax arises, and paint manufacturers in which lead poisoning is involved.

CHAPTER VIII

Trade Risks (*Continued*)

ENDORSEMENTS.

There remains to be considered various points of practical interest in the insurance of trade risks. We have seen that risks are classified in accordance with the trade, and that within the trade itself, different rates may be required for certain specified kinds of work. The object of the policy is, of course, to give to the employer a complete cover against his liability as defined in the policy, and to ensure this it may be said that in its simplest form an employers' liability policy gives a full and comprehensive cover. The employer is insured ir respect of his whole staff engaged in the business described in the policy, against his legal liability under various statutes, or at common law, without restriction or reservation of any kind. This simple form of policy is, however, applicable only to trades where the nature of all the work to be done is of a uniform hazard, a state of affairs which exists very seldom. In the discussion of various trades, it has been noted that many different kinds of work have to be done in the same factory or within the compass of the same trade, involving in many instances largely varying rates of premium. Yet not every employer in the same class of trade engages in all the different categories of work, and whilst one employer may have workmen engaged in every kind of work within the scope of the trade, another may engage only workmen for the least hazardous work. Let us take a simple example : A cabinet maker, if in a moderate way of business, may do all his work by the aid of hand tools only ; whilst another cabinet maker in a larger way of business may use wood-working machinery driven by mechanical power. It is obvious that some difference would be required in the policies issued to two such employers. The practical method of dealing with this is to issue a policy giving a complete cover, and to restrict its operation where necessary by endorsement. Thus, a cabinet maker with mechanically-driven machinery, would insure all his employees, paying the necessary

higher rating for those employees using the machinery, and would receive a policy free from endorsement. His schedule of employees, as given on the proposal form, would read as follows, imaginary figures being given—

	Estimated Annual Wages.
Employees engaged with wood-working machinery.	£500
All other employees	£1,000
	£1,500

The employer who had no machinery would pay only the ordinary trade rate, but his policy would have to be endorsed excluding the higher risk. This is necessary, as if the policy were issued without endorsement, there would be nothing to prevent the employer installing machinery during the year and expecting the employees engaged therewith to be covered under the policy. The endorsement safeguards the company's position and serves to make the matter clear to the insured. The form of endorsement used in such cases is as follows—

> It is hereby understood and agreed that any work in connection with wood-working machinery driven by steam, gas, water, electricity, or other mechanical power, is expressly excluded from the indemnity granted under this policy.

This form is used for all trades where wood-working machinists are not to be covered.

As an aid to the student, specimens of some of the more frequently used endorsements are given, with a note of the trades in which they are commonly required. It should be understood that risks excluded by endorsement are not covered at the ordinary trade rate but may usually be included at a higher rate. If they are so included, the endorsement is no longer necessary.

Delivery by Hand.

> It is hereby understood and agreed that any work in connection with the delivery of goods, whether by hand or otherwise, is expressly excluded from the indemnity granted under this policy.

This is used in a few retail shop risks where the delivery risk, even if by hand only, is above the normal hazard: e.g. dairies, newsagents, stationers, furniture dealers, bakers, and confectioners.

Delivery Other than Hand.

It is hereby understood and agreed that any work in connection with the carting or delivery of goods other than by hand or hand-cart is expressly excluded from the indemnity granted under this policy.

This endorsement applies to all retail shops other than those previously mentioned and except those in the most hazardous class, where the trade rate is sufficiently high to cover delivery.

That is to say, all hands engaged in connection with a retail shop, in the delivery of goods by horse or motor vehicle, are charged at a higher rate.

Warehouse Risks. A special endorsement is required for warehouse risks to exclude not only delivery but also wharf and riverside risks. This endorsement runs as follows—

It is hereby understood and agreed that the indemnity granted under the within policy does not extend to indemnify the insured in respect of accidents to

(*a*) Hands in warehouse receiving or delivering from or to vessels, and/or on deck, quayside, or wharf.

(*b*) Stevedores or lightermen.

(*c*) Employees engaged in delivering by cycles or horse or motor vehicles, and employees engaged in stable or motor shed.

Where delivery hands are covered and the appropriate rate of premium paid, clause (*c*) of the endorsement is omitted.

Mechanically-driven Machinery. In many trades processes are carried on which may or may not involve the use of general machinery driven by mechanical power. Where such machinery is not used an endorsement is required to limit the scope of the policy. Examples of such trades are bakers, confectioners, and dairies.

The endorsement reads as follows—

It is hereby understood and agreed that any work in connection with the use of machinery driven by steam, gas, water, electricity, or other mechanical power, is expressly excluded from the indemnity granted under this policy.

Painters' and Decorators' Endorsement. In the trade of a painter and decorator, it is obvious that the hazard depends to a very great extent on the class of buildings on which the employees operate.

A subdivision of the risk is made accordingly, and endorsements are applied where necessary to limit the scope of the insurance. At the lowest rate of premium the following endorsement is required—

> It is hereby understood and agreed that any work in connection with painting or decorating of churches, chapels, cinemas, electric theatres, theatres, music halls, public halls, gasometers, towers, bridges, viaducts, or blast furnaces, the painting, scraping or scaling of ships, or any work in connection with the roofs of railway stations or railway platform awnings is expressly excluded from the indemnity granted under this policy.

If a higher rate of premium is paid, only the class of work referred to in the next endorsement will be excluded.

> It is hereby understood and agreed that any work in connection with the painting and decorating of gasometers, towers, bridges, viaducts or blast furnaces, the painting, scraping or scaling of ships, or any work in connection with the roofs of railway stations exceeding a height of 30 feet from the ground level is expressly excluded from the indemnity granted under this policy.

Where an even higher rate is paid, a policy will be issued free of endorsement to cover all risks incidental to the trade.

Electrical Engineers—Light or Power. A very similar arrangement is made in regard to this trade, two rates being charged, one to cover installations made in any kind of building, and a lower rate where certain buildings are excepted. In the latter case the relative endorsement runs—

> It is hereby understood and agreed that any work in connection with the erection, fitting up or repair of plant or installation in generating stations, cinemas, collieries, electric theatres, factories, mines, quarries, ships, theatres, music halls, public halls, and on the roofs of railway stations over 30 feet in height, is expressly excluded from the indemnity granted under this policy.

Engineers—Outside Work. We have seen that in the usual way, employees are covered whilst engaged anywhere in the course of their employment. Thus, a builder who has his main premises in a town may send his workmen to all parts of the surrounding country, and his policy will cover him in respect thereof. Other examples will readily occur to the reader. In some trades, of which the engineering trade is a notable example, it may happen

that the kind of work carried on away from the employer's premises is by its nature more hazardous than the work done on the premises. This is not so for every kind of engineering risk, and, when possible, an all round rate is charged to cover the employees wherever employed. But in other cases, the difference in hazard requires a distinction to be drawn between work away from the shop or yard, and the ordinary work in the shop or yard. Examples of such engineering risks, are bridge and girder builders, colliery machinery makers, crane makers, gasometer makers, hydraulic machinery makers, and lift manufacturers. In all of these trades it is easy to see that the hazard involved in the manufacture in the workshops of the component parts of the various products, is very much less than the hazard of erecting the machinery or finished products, and of fitting and repairing it when necessary. When, therefore, the ordinary trade rate is applicable, the following endorsement is placed on the policy—

> It is hereby understood and agreed that any work in connection with erecting or fitting or repair away from the shop or yard of the insured is expressly excluded from the indemnity granted under this policy.

Grocers' and Provision Dealers' Endorsements. A grocer and provision dealer, whilst one of the most familiar trades, presents various complicated features governing the rating. Various endorsements are therefore required, according to the rate of premium paid.

(1) Wholesale Grocers. These are considered as warehouse risks, and no further subdivision is considered necessary. The endorsements excluding wharf and riverside risks, and in some cases delivery, are those appropriate to this branch of the trade.

(2) Retail Grocers. Considerable variation exists in the business of retail grocers, according to whether the use of machinery is involved or whether the employer has a licence for the sale of intoxicating liquors. Retail grocers are therefore classified as follows—

(*a*) Where no licence and no machinery is used.

The following endorsements are applicable to all employees other than hands engaged in delivery.—

> It is hereby understood and agreed that this policy is issued

on the express understanding and condition that no sale of wines, spirits, or beer is carried on.

It is understood and agreed that no liability attaches to the company if the insured has or uses any machinery (other than cranes, hoists, or lifts), driven by steam, gas, water, electricity, or other mechanical power.

(*b*) Where no licence, but where machinery is used.

In this class the first endorsement is applicable, but the record is not required.

(*c*) Where the employer holds an off-licence, but no bottling by machinery is done.

Neither of the two endorsements mentioned would be applicable here. The insured sells intoxicating liquors under an off licence, and the rate charged permits of the use of mechanically-driven machinery, except when used for bottling. The necessary endorsements run as follows—

It is hereby understood and agreed that this policy is issued on the express understanding and condition that the insured holds an off licence only.

It is hereby understood and agreed that this policy is issued on the express understanding and condition that no bottling by mechanically-driven machinery is carried on.

(*d*) Where the employer holds an off licence, and where bottling by machinery is done.

Under this heading the second endorsement is omitted. Under each of the four headings already enumerated the ordinary trade rate excludes delivery other than by hand, and the appropriate endorsement must be applied.

(*e*) Where the employer has a full licence.

A grocer holding a full licence, i.e. for the sale of intoxicating liquors to be consumed on or off the premises, must be considered for rating in a similar light to a public house, except that a distinction may be drawn in regard to employees engaged purely in the grocery section of the business. Such an employer would be required to state in the schedule of his proposal form the estimated wages paid to each of the following classes of employees—

(1) Employees engaged in delivery, whether by hand or otherwise.

(2) Employees engaged in serving drink, whether partially or wholly.

(3) All other employees.

With regard to this section, the employer must further state whether these employees are engaged in bottling by machinery or not.

Employees under sections (1) and (2) are the most hazardous, and the rate charged carries a policy free from endorsement. Under Section 3, the endorsement excluding delivery by hand is required, as also that excluding bottling by machinery if such work is not done.

Sub-contractors' Endorsement. Under condition 6 of the policy form, unless specifically included by endorsement, the indemnity granted does not apply to any liability of the insured to employees of a sub-contractor to the insured. It will be remembered, however, that a question in the proposal form asks whether the liability to workmen of sub-contractors is to be insured, and this liability is frequently included by endorsement on the policy.

The rate charged for a sub-contractor's employees is the rate for the trade in which they are employed, but the insured cannot give an estimate of their wages, as he does not pay them their wages, and usually has no convenient means of ascertaining the amount thereof. This being so a different standard is adopted, viz.: the amount of the sub-contract. The amount charged by the sub-contractor, however, depends on three factors, wages of employees, cost of materials, and a margin of profit. It would not, therefore, be equitable to charge the full trade rate on the whole amount of the contract, and it was the custom to charge premium upon one-half of the amount of the contract which was considered to represent a fair estimate of the amount of wages paid. The rise during recent years of the general level of wages has somewhat disturbed this arrangement, and the modern practice is to determine a percentage of the contract as being applicable to wages, according to the circumstances of the case, provided that the amount so determined is not less than 50 per cent. The endorsement reads—

> It is hereby understood and agreed that the indemnity herein granted is extended to cover the legal liability of the insured to workmen in the employment of sub-contractors performing work

for the insured while engaged in the business and occupations in respect of which the within policy is granted, but only so far as regards claims under the Workmen's Compensation Act, 1906, and the Workmen's Compensation (War Addition) Acts, 1917 and 1919, the premium in respect of such extended insurance to be calculated at the rate of .. per cent on .. per cent of the total sums paid to such sub-contractors by the insured in respect of work executed during each period of insurance.

This endorsement deals only with the question of indemnifying a principal against his liability under Section 4 of the Act of 1906. It is provided by that section that if a principal is called upon to pay compensation he can recover the amount from the sub-contractor, and such right would become transferred to the company which had indemnified the principal under a policy of insurance. If the sub-contractor is himself insured against his liability to his own employees, as if he were a man of any substance he undoubtedly would be, his insurance company would then be called upon to make good the compensation paid on behalf of the principal. It sometimes happens that the principal does not hold a policy insuring his liability to sub-contractors' employees, owing possibly to the uncertain or varying nature of his sub-contracts, or to the fact that he is not insured at all. This happens frequently in the case of public authorities who contract with a sub-contractor for various works in connection with their district. A principal in such a position requires to make sure that he will not have to pay compensation to the employees of a sub-contractor. This is done by endorsement on the policy held by the sub-contractor, by virtue of which the company issuing the policy agrees to indemnify the principal against his liability under Section 4 of the Act. To this extent the policy becomes a joint policy between the insured and the principal. The form of endorsement used to give effect to this arrangement is worded as follows—

It is hereby understood and agreed that in the event of any workman employed by the within named insured, or any dependant of such workman bringing or making a claim under Section 4 of the Workmen's Compensation Act, 1906, against (here insert name of principal) for personal injury or disease

sustained whilst at work on any contract covered by the terms and conditions of the within policy which the insured may be carrying out for the said . . . . the company will indemnify the said . . . . against such claim and/or any costs, charges, and expenses in respect thereof: Provided always that the company shall not be liable hereunder unless the company has the sole conduct and control of all claims covered by this endorsement. Nothing in this endorsement shall be construed as affecting the insured's title to recover damages under any other section of the said Act.

As a further security to the principal, the insured (i.e. the sub-contractor) gives an indemnity himself in the same substance, accompanied by a declaration of the name of the company with which he is insured.

EMPLOYEES EARNING OVER £250 PER ANNUM.

The ordinary form of policy covers only employees who are "workmen" within the meaning of Section 13 of the Workmen's Compensation Act, 1906. It does not, therefore, extend to employees not engaged in manual labour whose earnings exceed £250 per annum. Such employees may be included by endorsement to cover either—

(1) The benefits of the Workmen's Compensation Act, 1906, i.e. the amounts which would have been payable as compensation to such employees, had their earnings not exceeded £250 per annum; or (2) The liability of the employer towards such employees at common law.

The common law liability of the employer has been analysed in a previous chapter, and it exists quite apart from the amount of an employee's annual earnings, or whether he is engaged in manual labour or not. Where an extension of the policy is required for these employees, it is more often in respect of the common law liability, though it is open to question whether this liability is sufficiently realized or insured against by employers in general.

Workmen's Compensation Act benefits may be covered at the ordinary trade rate. The common law liability is covered at 1s. 6d. per cent, irrespective of the nature of the trade. In both cases the rate is based on the full earnings of the employees to be

insured, and the cover is restricted to accidents arising out of and in course of the employment. The two forms of endorsement in use for this cover are as follows—

(1) It is hereby understood and agreed that in consideration of an additional premium being paid, the within policy is extended, subject to the terms and conditions thereof, to provide the benefits of the Workmen's Compensation Act, 1906, in respect of accidents arising out of and in the course of the employment to employees not engaged in manual labour whose earnings exceed £250 per annum, such compensation to be paid as though the earnings did not exceed £250 per annum in any case, provided that after payment of such compensation the company shall not in any way be liable for or concerned in any claim made against the insured in respect of the accident for which such compensation was paid.

(2) In consideration of premium being paid on the total earnings of employees receiving more than £250 per annum, and not engaged in manual labour, it is hereby understood and agreed that the within policy, subject to the terms and conditions thereof, is extended to indemnify the insured in respect of his liability at common law for accidents to such employees arising out of and in course of employment.

There are a large number of other endorsements in use for workmen's compensation insurance. The great majority of trades include in their incidental processes differing degrees of accident hazard, necessitating special endorsement where the class of work is not done, and the higher rate is not paid.

Space will not permit of a detailed reference to all these endorsements, which number over three hundred. The specimen endorsements which have been set out are those in the most common use, and serve to illustrate the practical methods of dealing with the business.

CHAPTER IX

Claims

The subject of Employer's Liability claims is closely concerned with the procedure laid down under the Act of 1906 for the settlement of disputes, which procedure is regulated by the Workmen's Compensation Rules.

This connection is easily understood when it is remembered that a claim is not a matter for adjustment between the company and the insured, but is a matter to be settled with the injured workman in accordance with scales of compensation and rules of procedure laid down by statute. The whole subject is, therefore, a wide one, so much so that claims and court procedure constitute a separate subject in the examinations of the Chartered Insurance Institute. It would be frankly impossible to deal with the subject adequately within the compass of this work, but some general remarks on the practice of insurance companies in dealing with claims are desirable in order to add completeness to the treatment of the subject.

The first point to be borne in mind is that all negotiations for the settlement of claims are conducted between the company and the injured workman, and not, as is the case with fire or burglary claims, direct between the company and the insured. Where a claim for compensation is made by an injured workman it is not the practice for the employer to make a settlement and then to call on the company to indemnify him under their policy.

It is the invariable rule for the company to deal themselves with the injured workman. Condition 3 of the policy form expressly stipulates that the insured shall not make any payment, settlement, or admission of liability in respect of any injury for which the company shall be liable, without the written authority of the company. Further, by the same condition, the company reserves the right to use the name of the insured for bringing or defending any legal proceedings, so that the company has the right either to settle any undisputed claim or to contest any disputed claim with the workman, without any intervention on the part of the employer.

An office transacting any considerable volume of the business requires an extensive and experienced staff to handle claims, perhaps more so than in any other branch of insurance business. Claims are not handled by assessors, as is done with fire and burglary claims, but are dealt with by the company's own officials, with the aid of medical or legal advice wher necessary. Workmen's Compensation claims, by their nature, frequently take many months or even years to dispose of, and a very great amount of detail work is involved.

OBLIGATIONS ON THE EMPLOYER.

Turning again to the conditions of the policy, it will be seen that certain obligations are binding on the employer in the event of claim. Condition 2 provides that the insured shall give notice of any accident or disease covered by the policy, as soon as practicable after the accident or disease, or any incapacity arising therefrom comes to his knowledge, or the knowledge of his representative.

Further, the employer must forward every written notice or any information as to any verbal notice of claim made upon him by the employee, and all particulars of any proceedings issued against him. Two things are clear here for the employer to do—

(1) Notice of accident or disease.

(2) Notice of claim.

These are entirely independent of each other, and notice of accident or disease *must* be given, even though the employer might have good reason to suppose no claim would result. The notice must be given as soon as practicable after it comes to the insured's knowledge, otherwise the company would very likely be prejudiced in dealing with the claim.

It is proposed to detail the steps to be taken by the company when a notice of accident has been received.

CLAIM FORM.

The first step is to issue a claim form to the insured, so drawn up as to give the company all the information it requires. Questions regarding claim forms are very frequently met with in examinations, and it will be of assistance to students to study it

carefully. The questions which follow are those found in a typical claim form, though, of course, each office has its own ideas on the subject.

At the head of the form the employer is asked to state his name, address, and business, and his policy number; these are for reference to the office records. The remainder of the claim form refers to the injured employee, and may be divided into the following sections—

(1) The injured person.
(2) The earnings.
(3) The accident.
(4) The injury.

The Injured Person. The following details are required—

(*a*) Full name.
(*b*) Age.
(*c*) Address.
(*d*) Occupation.
(*e*) Whether married or single.
(*f*) Whether in the direct employ of and receiving wages from the insured.
(*g*) How long he had been in the insured's regular employ prior to the accident.
(*h*) Whether he is insured under the National Insurance Act, 1911.

The name, address, and occupation of the injured person are necessary for obvious reasons. The age is required for two reasons. First, if the employee is under 21, compensation is payable on a different scale, i.e. full wages up to 10s. per week, with war additions, provided the total earnings do not exceed 20s. per week. Secondly, the office requires to know if the employee is of advanced age in order to arrive more correctly at an estimate of the probable length of disablement, and the probable cost of the claim. The question of marriage becomes important in fatal cases, where the compensation varies according to the dependants left by the injured man. In fatal cases, further inquiries would have to be made as to the names of the widow and such children as were dependent on the deceased's earnings.

The next question refers to whether the workman was in the direct employ of the insured. If he was in the service of a sub-contractor, the company might be liable if the insured was liable and the sub-contracting risk was covered under the policy, but the company would have a right over against the sub-contractor, as provided under Section 4 of the Workmen's Compensation Act, 1906. The question of who pays the workmen's wages is useful evidence of who is really the employer.

The length of service is only material when the employment has lasted for less than three years in cases of fatal injury, or less than twelve months in cases of non-fatal injury. The amount of weekly compensation in such cases has to be calculated according to the actual length of service as provided by paragraph 1 of the first Schedule to the Act. (See Chapter II.)

National Insurance Act. Information as to whether the employee is an insured person under this Act is required, as in cases where lump sum settlements are made a notice thereof has to be sent to the National Insurance Commissioners.

The Earnings. The amount of compensation payable is regulated by the amount of the employee's earnings. The insured is asked to state—

(1) The employee's average weekly wages during the twelve months preceding the accident, or during any less period during which the workman had been in the insured's service. By wages is meant actual cash paid for the services rendered, where the period of service is less than twelve months, it may be necessary to make inquiries to verify the employer's figures, especially when there is a likelihood of any break in the continuity of the service. The technical provisions of Section (*c*) of paragraph 2 of the first Schedule to the Act, which govern this point, are naturally often beyond the understanding of the ordinary layman.

(2) Whether the employee received either board or lodging, or both.

(3) Whether the employee received any other perquisites such as cottage, or milk, or vegetables, and if so the estimated annual value thereof.

An employee is entitled to be compensated according to his earnings, and these will include in addition to cash wages, the value

of any additional allowances of the nature indicated, provided, of course, those allowances are made in return for work done. The value of board and lodging is generally assessed as between the company and the insured at 10s. per week, though this figure would not, of course, bind the workman who could base his claim on whatever sum he might be able to prove the board and lodging to be worth. If, as frequently happens, an injured workman continues to receive board and lodging during disablement, the question would not arise.

Included in the additional allowances would be tips or gratuities, provided they are recognized by the custom of a trade as part of an employee's earnings, and these would require to be declared on the claim form.

Another point arises here, where an employee has entered into concurrent contracts of service, he is entitled to base his claim for compensation on the total amount of his earnings under all the contracts. This information is not generally asked for on the claim form, as it is, of course, a matter for the employee himself to raise when accepting his weekly compensation.

The Accident. The following particulars are required of the accident, and these must be given with the utmost accuracy—

(*a*) Date and exact time it happened.

(*b*) When reported to employer or to his representative.

(*c*) Where it occurred.

(*d*) Was the workman performing duties required of him by the employer? If so, the exact nature of such duties.

(*e*) Full particulars of the accident and how the injury was caused.

(*f*) Was the accident due to any breach of regulations? If so, on whose part?

(*g*) Was the accident due to negligence on the part of any person?

(*h*) Was the employee sober?

(*i*) Name and address of a witness to the accident.

Date of Accident. The date and time of the accident, if disablement immediately supervenes, govern the period during which compensation is payable. The exact time must be given. If an accident occurs early in the day, that day would count as a day of disablement, but if the accident occurs late in the day, the

employee would usually receive his wages for that day and compensation would commence from the following day.

When Reported. This information shows whether there has been any delay in notifying the company.

Address and Nature of Duties. Employees are covered under the policy anywhere that they may be carrying out their duties in the United Kingdom, unless the scope of the policy is limited by endorsement. The address is required if the company requires to investigate the matter or the scene of the accident. The nature of the duties being performed discloses whether the workman was engaged in the business of the employer as described in the policy. Further, it is asked whether the employee was performing duties required of him by the employer. This does not mean that the employer must have specifically set the man to that particular work, but that the work must be part of his ordinary job, or such as he was engaged in a general way to do. The importance of this question lies in this. To establish liability under the Act, the accident must have arisen *out of and in course of* the employment. The true interpretation of these words has given rise to more litigation perhaps than any other part of the Act. The object of this question in the claim form is to throw as much light as possible on the matter, though each case has to be judged according to the circumstances.

Particulars of the Accident. Again, information is sought on the same point previously mentioned. Exact details must be given of how the accident happened and in what manner the injury was caused, with a view to ascertaining whether or not it was an accident within the meaning of the Act. Doubtful cases have to be fully investigated by the company.

BREACH OF REGULATIONS.

(*a*) **By the Workman.** This also has a bearing on the same subject. A breach of regulations may amount to serious and wilful misconduct, in which event the workman forfeits his claim unless death or serious and permanent disablement results. But what is more usual is that by breaking regulations the workman goes beyond his proper employment, and the accident will be held not to have arisen in course of employment. An example of this is

provided when conspicuous notices are posted in the works that machinery must not be cleaned whilst in motion. An accident occurring through a workman's disregard of this rule would take him outside his proper sphere of employment.

(*b*) **By a Foreman or Superintendent.** This might, in certain circumstances give rise to a claim under the Employers' Liability Act, if negligence could be shown against the foreman or superintendent.

NEGLIGENCE.

If the accident has been caused by some person's negligence, various points arise. The negligence causing the accident may be on the part of—

(*a*) The employer.
(*b*) The injured workman.
(*c*) A fellow employee.
(*d*) A third party.

Negligence by the employer would give rise to a claim against him, either at common law or under the Employers' Liability Act. The workman could elect whether to proceed accordingly or whether to claim under the Workmen's Compensation Act, 1906, but under Section 1 of that Act he could not recover both damages and compensation.

Negligence by the injured workman might be sufficient to constitute "serious and wilful misconduct," and to bar his claim for accidents causing temporary disablement.

Negligence by a fellow employee would not act as a bar to a claim, as the doctrine of common employment is abrogated by the 1906 Act. It may happen, however, that where the accident is caused by the joint negligence of the injured workman and another workman, as in cases of "larking," a claim might fail as the accident did not arise out of and in course of the employment.

Negligence of a third party is important from the company's point of view. Since negligence, if proved, would give the workman a right of action to damages, but if he elects to recover compensation under the Act, his rights against the third party are transferred to his employer by virtue of Section 6 of the Act. But by condition 3 of the policy any remedies of the employer are vested in the

company which has indemnified him for any compensation paid. A thorough investigation is called for where negligence is alleged against a third party, so that the company may safeguard its rights against that person.

The sobriety of the injured workman has a bearing on his conduct, and drunkenness has been held in the Scottish courts to be "serious and wilful misconduct." It would always give rise to investigation, but would not necessarily be a sufficient ground in every case to resist a claim.

WITNESSES.

The names of witnesses are necessary to obtain corroborative evidence of the accident and of any doubtful points which may be in dispute.

THE INJURY.

The following questions appear on the claim form under this heading—

(*a*) State the exact nature of the injury.

(*b*) When did total disablement commence?

(*c*) Is the workman still totally incapacitated for work and, if so, what is the probable duration of incapacity?

(*d*) State name and address of doctor attending the workman or the name of the hospital at which he is being treated.

(*e*) Has any claim been made by the workman or on his behalf? If in writing this must be forwarded.

The object of these questions is fairly obvious. The company requires to know, firstly, the exact extent of the injuries, whether serious or otherwise; the period of disablement, when commencing and when likely to end, governs the period during which compensation will be payable; the name of the doctor or hospital puts the company in a position to obtain such medical evidence as it may require.

It may be said that an office, when dealing with a claim, has two main considerations before it: firstly, to satisfy itself from the particulars given, that compensation of a certain amount is legally due to the workman, and, secondly, to obtain all information and to take all such steps as are necessary to enable the workman to

recover from his injury and return to his work at the earliest moment possible. All the particulars asked for on the claim form must be read in the light of these two factors.

PROCEDURE WHEN LIABILITY IS ADMITTED.

If the facts are such that liability to the injured workman is admitted, the procedure adopted in practice is as follows. From the particulars given on the claim form, the amount of the weekly compensation is calculated, regard being had to the increases provided by the Workmen's Compensation (War Addition) Acts, 1917 and 1919, but this compensation is not paid by the company direct to the workman. The employer is authorized to make the weekly payments, the company reimbursing him at convenient intervals or when the workman has returned to work, as may be required. A form of receipt is issued to be signed by the workman, the first payment being signed for on the front of the form, and spaces being provided on the back of the form for a signature week by week. The form of the receipt is of some importance and is given in full—

> *Received this.....day of*.....192.. *from*..... ..... *the sum of*.....*being compensation for total incapacity for the week ending*..... *in respect of injuries by accident received by me on the*..... *day of* ..... *for which injuries I hereby claim and elect to be compensated under the Workmen's Compensation Act,* 1906, *the said compensation to be continued weekly during my total incapacity for work.*

The chief point of this form is that in cases where more than one remedy against the employer is open to the workman, if he elects to claim under the Act of 1906, he cannot subsequently proceed on any other ground.

When the payment of weekly compensation has been authorized, the company will not allow it to continue without question for an unreasonable time. From their experience, accident officials know approximately how long disablement should last, and if the workman, after a lapse of time, alleges he is still totally disabled the company will exercise the employer's right to have the workman medically examined. Under the first schedule of the Act,

paragraph 4, the employer may require the workman to be medically examined when notice of the accident is given, and by paragraph 14 when weekly payments are being made, further medical examinations may be made from time to time. A workman refusing to submit to such examinations forfeits his right to compensation during the period of such refusal. In practice, the companies employ their own medical advisers—in many cases specialists—for the purpose of examining claimants as and when necessary.

PARTIAL DISABLEMENT.

When an injured workman ceases to be totally disabled, but is still partially disabled, the compensation is generally reduced, regard being had to the difference in his earnings before and since the accident. A very usual basis is to pay half the amount of this difference, but it may be more than half, according to the circumstances of the case, not exceeding, of course, the maximum amount laid down by the Act. Where the amount cannot be agreed between the parties it must be settled by arbitration. It should be noted that the increases granted under the War Addition Acts cease to be payable during partial incapacity.

LUMP SUM SETTLEMENTS.

Claims are settled by the payment of a lump sum—

(1) In fatal cases.

(2) In non-fatal cases.

Fatal Cases. All fatal cases call for the payment of a lump sum, and except where the amount is in respect of medical and funeral expenses, the payment must be made into the County Court (Schedule I, paragraph 5).

Non-Fatal Cases. A lump sum settlement in non-fatal cases is made by way of redemption of the weekly payments, and such a settlement may be made where the workman is totally disabled, or where he is only partially disabled.

In cases of total disablement, if the disablement is likely to be permanent, or if it is difficult to say when the workman will be able to resume work, the company will generally endeavour to settle by a lump sum in order to dispose of their contingent liability. The same reasoning applies to cases of partial disablement. A lump

sum settlement is made with due regard to the diminished earning capacity of the workman caused by the accident and the length of time during which, according to the medical evidence, that diminution is likely to continue. The workman cannot, however, be compelled to agree to a redemption of his weekly payment, except under paragraph 17 of the first Schedule to the Act, which provides that where any weekly payment has continued for not less than six months the employer may redeem the payment by a lump sum of such an amount as would, if invested in the purchase of an annuity through the Post Office, purchase an annuity equal to 75 per cent of the weekly payment. This applies in cases of permanent disablement only; in other cases the amount of the lump sum is fixed by arbitration. This does not, of course, prevent the workman from agreeing to settle for some other figure.

All lump sum settlements, whether by agreement or by arbitration, must be sent to the County Court for registration under paragraph 9 of the second Schedule, except lump sum settlements made without any previous weekly payments. These come under the rule in *Ryan* v. *Hartley*, and need not be registered, because there having been no previous weekly payments there is nothing to redeem. This point, however, belongs more particularly to the subject of Court Procedure.

The effect of this provision for recording agreements is not to make it illegal to make a settlement without recording, but the settlement is not binding on the workman unless it is recorded, and although he might have given a receipt in full discharge of all liability, it would be competent for him to apply to the court subsequently to have the case re-opened, if he could show that he was still disabled as a result of the accident.

PROCEDURE WHERE LIABILITY IS DENIED.

If the facts as disclosed on the claim form show that liability does not fall on the employer in respect of the accident, the company will instruct him to advise his workman to that effect. In such case the employer would not be able to recover, under the policy, any sum which he might pay to the workman on his own initiative. On the other hand, should the workman issue arbitration proceedings the company would be bound to bear the expense

of contesting the matter if they thought fit, or in the alternative to admit the claim. It is in cases of this nature that legal advice and assistance is necessary. The company has its own solicitors who advise on the points of law involved, and if thought desirable, take the necessary steps to defend any arbitration proceedings. Companies do not usually contest cases unless they have good grounds for so doing, and it may with justice be observed that a great amount of the case law on the subject of workmen's compensation has been made at the instance of the insurance companies, which have thereby done a considerable service to the whole community.

DISEASES.

Where a workman is certified as suffering from a disease scheduled in the third Schedule or subsequent orders, the procedure to be adopted follows on much the same lines as in cases of accident, but the company will require to be satisfied on certain special points.

(1) The workman must produce a certificate from the certifying surgeon, or the suspension order under the Factory and Workshop Act, in the proper form as prescribed by the rules made under that Act.

(2) In case of death, satisfactory medical evidence must be forthcoming that the death was due to the disease.

(3) Inquiries must be made as to the workman's employers during the preceding twelve months, so that steps may be taken to recover in the employer's name any compensation which may be payable by those previous employers.

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